

STM

Oct. 5, 1998

to STREETS, appurtenances and easements thereto, and railroad right of ways." (This note is for information purposes only and is not part of the article.)

**Direct inquiries to:** Roland Bartl, Town Planner, 264-9636  
**Selectman Assigned:** Peter Ashton, 978-369-0550 or 263-4399

**Selectmen:** RECOMMENDED  
**Finance Committee:** RECOMMENDATION DEFERRED

#### **ARTICLE 6 FORECLOSED PROPERTY CLEANUP** (Majority Vote Required)

To see if the Town will vote to raise and appropriate, or appropriate from available funds, the sum of \$125,000, or any other sum, for assessment, containment and removal actions pursuant to General Laws Chapter 21E and the Massachusetts Contingency Plan, concerning the release or threat of release of oil or hazardous materials at or from the properties located at 28 Willow Street and 214 Central Street, Acton, formerly owned by Lawrence S. and Beverly A. Nichols, which the Town acquired by foreclosure of liens for unpaid taxes, or take any other action relative thereto.

##### **SUMMARY**

These two contiguous parcels, located on Willow and Central Streets, were taken by the Town for non-payment of taxes. In order to determine the ultimate disposal of these properties the Town conducted a 21E study, due to the known history of hazardous material storage on site. The preliminary investigation by the Town's consultant, O'Reilly, Talbot & Okun, has found levels of contamination, adjacent to an underground gasoline storage tank, which will require cleanup in accordance with the Massachusetts Contingency Plan. It is the Town's intent to conduct the clean-up in a timely and prudent fashion to ensure that the health and safety of the neighborhood remains protected. Upon completion of the cleanup the Town intends to dispose of the property.

**Direct inquiries to:** John Murray, Assistant Town Manager, 264-9612  
**Selectman Assigned:** Wayne Friedrichs, 978-975-5445 or 263-1557

**Selectmen:** RECOMMENDED  
**Finance Committee:** RECOMMENDATION DEFERRED

#### **ARTICLE 7\*\* SUPPLEMENTAL APPROPRIATION, NESWC** (Majority Vote Required)

To see if the Town will raise and appropriate, or appropriate from available funds, the sum of \$400,000, or any other sum, for the purpose of solid waste disposal, or take any other action relative thereto.

##### **SUMMARY**

An incinerator in Lawrence has closed. The closure has reduced trash disposal capacity by approximately 1,500 tons per day. Therefore, the demand for disposal capacity temporarily exceeds supply. This economic condition has created an opportunity for the Town to process non-town commercial tonnage at a profit. However under municipal law, the Town cannot spend monies, even if the expenditure will generate revenues in excess of the expenditure, without appropriation. The requested appropriation will supplement the appropriation granted during last April's Annual Town Meeting.

The plan is to appropriate from NESWC fund balance, in order to build a greater fund balance. This expenditure will not affect this year's tax rate. The purpose of fund balance is to enable the Town to level fund both the tax subsidy and the sticker fee in future years despite expenses more than doubling.

**Direct inquiries to:** John Murray, Assistant Town Manager, 264-9612  
**Selectman Assigned:** Herman Kabakoff, 401-739-7878 or 263-5598

**Selectmen:** RECOMMENDED  
**Finance Committee:** RECOMMENDED

STM

Oct. 5, 1998

**Motion Carries**

Vote YES 387 NO 21 Total 408

**Resolution:**

Mr. Lewis proposes that there is a sense of the meeting that the project will not proceed unless the project receives a zero interest loan from the state or otherwise a low interest loan for this project.

This is a non-binding resolution.

Resolution carries.

**Motion:**

Mr. Sundberg moves to adjourn this Town meeting until October 6, 1998

**Motion Is Lost**

**ARTICLE 4 SEWER BETTERMENT ASSESSMENT  
HOME RULE WARRANT PETITION  
(Majority Vote Required)**

To see if the Town will vote to authorize the Board of Selectmen to petition the General Court to enact a special act relative to sewer betterment assessments in the Town of Acton substantially as follows, or take any other action relative thereto:

**SECTION 1:** Notwithstanding the provisions of any general or special law to the contrary, the board of assessors of the town of Acton may, and at the request of the owner of the land assessed, shall apportion all assessments for sewer projects in said town or unpaid balances thereof into a number of equal portions equal to the number of years for which bonds for such projects are issued; said equal portions may be further apportioned and collected by the town on the quarterly tax bills or a single tax bill at the option of the town; provided, however, the owners may pay the total amount due at any time.

**SECTION 2:** Notwithstanding the provisions of any general or special law to the contrary, the town of Acton is hereby authorized to charge interest on unpaid balance of sewer assessments at a rate equal to the net rate of interest chargeable to the town for the project to which the assessments relate.

**SECTION 3.** This Act shall take effect upon its passage.

**Motion:**

MS. TAVERNIER moves that the Selectmen are authorized to petition the General Court for an Act relative to sewer betterment assessments in the Town of Acton, substantially as printed in the Warrant.

**Motion Carries Unanimously**

**ARTICLE 5 ZONING EXEMPTION FOR PUBLIC  
SEWER FACILITIES  
(2/3/ Vote Required)**

To see if the Town will vote to amend the Acton Zoning Bylaw by deleting section 1.4 and replacing it with a new section 1.4 as follows:

**1.4 Applicability** - All LOTS and parcels of land in the Town of Acton and all BUILDINGS, STRUCTURES and other improvements thereon shall be subject to the regulations, restrictions and requirements established in this Bylaw. Except when specifically referred to or stated otherwise, this Bylaw shall not apply to STREETS, appurtenances and easements thereto, to railroad rights of way, or to any BUILDING, STRUCTURE or USE of land, including grading, filling, and excavating, which is associated with a public sewer collection system owned or operated by the Town of Acton, or take any other action relative thereto.

**Motion:**

Mr. Ashton moves that the zoning bylaw be amended as set forth in the article.

**Motion Carries**

Vote YES 100 No 5 Total 105

**ARTICLE 6 FORECLOSED PROPERTY CLEANUP  
(Majority Vote Required)**

To see if the Town will vote to raise and appropriate, or appropriate from available funds, the sum of \$125,000, or any other sum, for assessment, containment and removal actions pursuant to General Laws Chapter 21E and the Massachusetts Contingency Plan, concerning the release or threat of release of oil or hazardous materials at or from the properties located at 28 Willow Street and 214 Central Street, Acton, formerly owned by Lawrence S. and Beverly A. Nichols, which the Town acquired by foreclosure of liens for unpaid taxes, or take any other action relative thereto.

**Motion:**

Mr. Friedrichs moves that the Town raise and appropriate \$125,000 to be expended by the Town Manager for the assessment, containment and removal of hazardous waste from prop-

X-Originating-IP: [216.20.70.194]  
Subject: RE: Willow Street  
Date: Thu, 9 Jun 2005 15:06:42 -0400  
X-MS-Has-Attach:  
X-MS-TNEF-Correlator:  
Thread-Topic: Willow Street  
Thread-Index: AcVtJiyf020AzdBZQBOYF1GMwhiyCgAABMnw  
From: "Doug Halley" <dhalley@acton-ma.gov>  
To: "Nancy Tavernier" <ntavern@comcast.net>

I haven't included the back taxes in the amount but that is all we spent on clean-up.

-----Original Message-----

**From:** Nancy Tavernier  
**Sent:** Thursday, June 09, 2005 3:05 PM  
**To:** Doug Halley  
**Subject:** Re: Willow Street

Is that ALL that was spent, I thought it was more like \$160,000 or would that include the back taxes??

Thanks so much for tracking this down.

At 11:44 AM 6/9/2005, you wrote:

| We spent just under \$69,000 on the Willow Street clean up.

**Memorandum**

**To:** John Murray  
**CC:** Don Johnson  
**From:** Nancy Tavernier  
**Date:** 02/18/99  
**Re:** ACHC proposal for Willow St.

---

The Acton Community Housing Corporation (town board) is exploring an option that would result in the construction of at least 2 single family units to be located on the recently acquired parcel on Willow St./Central St. This property has been foreclosed by the Town for back taxes and is in the process of being cleaned up by the town from soil contamination by previous owners.

Here are the factors for consideration:

1. The Town has a gift fund of \$100,000 received from the New View Development to be used for providing "affordable housing" in lieu of a second unit being constructed on their site.
2. Ron Peabody of Bellows Farm is required by the Planning Board to provide a minimum of 6 units of single family housing off-site at a total cost of \$1.2 million. He has purchased 2 to date and has a 3<sup>rd</sup> under P&S. These have been or will be sold to eligible first time home buyers under the state's Local Initiative Program (LIP).
3. The parcel is 15,000 square feet and the wastewater disposal capacity of the site is estimated to be sufficient to handle 27 bedrooms of capacity.
4. The zoning is Village Residential which allows a four unit building with the requirement that one unit is owner-occupied. Any configuration, greater than 1 unit on the parcel, would require the use of a comprehensive permit.
5. The ACHC is looking only at a home ownership program, not a rental, and the preference is for the units to be detached but to have a common septic system.

6. Ron Peabody has estimated the construction cost of these units, including site work, to be \$178,000 per unit. I do not believe this factors in any land acquisition cost.

This is the Proposal in concept:

1. Ron Peabody would build 2 single family units that would be: detached, 1600 square feet living area, 3 Bedroom, LR, DR, 2 Baths, 2 stories and in a design that would be keeping with the character of the neighborhood.
2. Peabody would market the units to eligible first time home buyers using the same approved lottery procedures, under the supervision of the ACHC. The current selling price of LIPcondominium affordable units is \$88,000.
3. The units would be under the LIP program and would count toward the town's 10%.
4. The units would be part of the Bellows Farm requirement to provide at least 6 units in scattered sites around town.

These are the questions:

1. Would town meeting action be required to transfer ownership from the town to a private developer to build affordable housing.? There is no plan for ACHC (town) to be owners nor have we held title to any of the properties to date purchased by Peabody for affordable housing.
2. Would a RFP have to be issued that would stipulate the construction of (2) 3BR SF units that would sell to eligible first time home buyers for \$88,000?
3. If Peabody were to purchase the parcel from the town, would it have to go to auction first? If not, could he buy it at cost (back taxes + cleanup costs) without auction since it would be for a "public" purpose?
4. If it were necessary to use the Gift Fund to accomplish the project, how could it best be used?
5. What are the liabilities inherent in the cleaned-up site? Will there be an ongoing monitoring program? What if the abutting properties have become contaminated or it is discovered at some future time, will the affordable home owners be held liable for a clean-up cost?

The ACHC meets next on March 4 to discuss this project in more detail. We hope to have all the answers by then so that we can move ahead. We would like to avoid Town Meeting action since the timing is a factor.

Memorandum

**To:** John Murray  
**CC:** Don Johnson  
**From:** Nancy Tavernier  
**Date:** 03/18/99  
**Re:** ACHC & Willow St.

---

The ACHC met this morning to discuss the recent information obtained from you and Norm Cohen in regard to my questions posed about how ACHC could access the Willow St. property for affordable housing. (Memo from Palmer & Dodge 3/3/99) We remain interested in pursuing this proposal and have more questions.

1. Norm's reference to a "standing town meeting vote". Could you clarify what that would be and if it is required (with MGL reference)? We would like to have an article prepared for the next special town meeting should this vote be required. We would hope, if required, the article could be a general one to allow the town to dispose of tax title property for any purpose without having to return to town meeting for permission each time.
2. My understanding from you is that if the New View Gift Fund is used to reimburse the town for the back taxes and related expenses, then the town will have clear title without the necessity of appropriating money at a town meeting. Correct? I understand that the town needs to have clear title before the property can be disposed of by auction.
3. Could you update me on the clean-up progress and what the approximate timetable is for completion?

We will be meeting next on April 1 and would appreciate answers for that meeting.

Thank you.

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3. If Peabody were to purchase the parcel from the town, would it have to go to auction first? If not, could he buy it at cost (back taxes + cleanup costs) without auction since it would be for a "public" purpose?
4. If it were necessary to use the Gift Fund to accomplish the project, how could it best be used?
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**Date:** 03/18/99  
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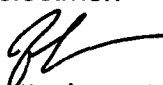
1. Norm's reference to a "standing town meeting vote". Could you clarify what that would be and if it is required (with MGL reference)? We would like to have an article prepared for the next special town meeting should this vote be required. We would hope, if required, the article could be a general one to allow the town to dispose of tax title property for any purpose without having to return to town meeting for permission each time.
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Thank you.



# Memo

**To:** The Board of Selectmen  
**From:** John Murray   
**CC:** ACHC (without attachments)  
**Date:** 04/21/00  
**Re:** Sale of Foreclosed Properties

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Pursuant to Article 32 of the April 2000, Annual Town Meeting, the Board of Selectmen is authorized to sell tax delinquent properties that the Town has obtained through foreclosure. Attached, as Exhibit A is the list of properties that I, as the Collector/Treasurer, suggest to sell at this time. Attached, as Exhibit A-1 are locus plans of the applicable properties. In addition, I attached G.L. C. 60 S. 77B and S. 80 as Exhibits B and C respectively. These sections describe the procedure necessary for the sale of such properties.

The Board should be aware that the Acton Community Housing Corporation (ACHC) would appreciate any consideration the Board may provide them in obtaining additional properties for low and moderate-income housing. While, a proposal is not attached to this memo, I expect that the ACHC will provide comment under separate cover in the packet or in the extra information packet on Tuesday evening. Consideration could range from a gift of property to ACHC, or sale of the property to ACHC at a below-market price, or a deed restriction requiring the construction of low/moderate income housing, or other some other consideration.

Previous action by the Board of Selectmen under G.L. C. 60, S. 77B appointed the Treasurer as custodian of foreclosed properties. That previous vote did not specify the term of the appointment. Consequently, I believe the Board should make an annual appointment, unless it wishes to make a standing appointment. Due to the power of the custodian to sell foreclosed property under this section of law, the Board should specify if it wishes to approve the sale of each property or to authorize the custodian to sell without any further action by the Board.

ACTON COMMUNITY HOUSING CORPORATION

P.O. Box 681  
Acton, MA 01720  
(978) 263-4776

April 21, 2000

Board of Selectmen  
Acton Town Hall  
Acton, MA

Dear Board members:

The ACHC wishes to thank the Board for its support of the recent town meeting action to allow the town to sell properties foreclosed for non-payment of taxes. If you recall, we met with you last August to discuss a proposal for the potential use of town-owned land on Willow St. for affordable housing. We wish to re-state our interest in facilitating the development of affordable housing on that site and would like to begin the process required. We would be interested in any other town-acquired property that is suitable for development also. We would expect the affordable units to be deed-restricted to sustain the affordability in the future. We understand that an RFP has to be developed before the properties go out to bid so that the purpose of affordability can be met.

Here are some of the points for consideration:

- Sweeney  
\$300K (AHA)
1. The Town has a gift fund of \$100,000 received from the New View Development to be used for providing "affordable housing" in lieu of a second unit being constructed on their site.
  2. The Willow St. parcel is 15,000 square feet and the wastewater disposal capacity of the site is estimated to be sufficient to handle 27 bedrooms of capacity.
  3. The zoning is Village Residential, which allows a four-unit building with the requirement that one unit is owner-occupied. Any configuration, greater than 1 unit on the parcel if not owner-occupied, would require the use of a comprehensive permit.
  - 2 4. The ACHC is looking only at a home ownership program, not a rental, and the preference is for the units to be detached but to have a common septic system. We also wish to provide family housing with 3 bedroom units.
  5. Ron Peabody once estimated the construction cost of these units, including site work, to be \$178,000 per unit. I do not believe this factors in any land acquisition cost.

A good starting place for ACHC and the town would be to look to the Acton Zoning Bylaw section 4.4 for guidance on the requirements necessary to meet the Affordable Housing Incentives and Overlay District. We originally discussed a maximum of 3 units on the site but need to revisit the issue.

We would like to request the assignment of a staff person to help us develop a proposal for the use of this land. We would be prepared to recommend the use of the New View Fund to offset the cost of the acquisition, whether taxes, clean up or some portion of both. We would like to see the maximum benefit from the use of those funds.

We recently held a lottery for the 8 new units available this coming year through Harris Village and Westside Village. There were over 125 qualified applicants for the 8 units. There is a great demand for affordable housing and we look forward to initiating our first ACHC project. Public support for our efforts has been most visible in the past few months.

We look forward to working together on a very important community goal. If you have any questions, please call me at 263-9611.

Thank you for your support.

Sincerely,

Nancy Tavernier, Chair  
ACHC

ACTON COMMUNITY HOUSING CORPORATION

P.O. Box 681  
Acton, MA 01720  
(978) 263-4776

August 20, 1999

Acton Board of Selectmen  
Acton Town Hall  
Acton, MA

Dear Board Members:

Thank you for meeting with the ACHC on the proposed use of the Willow St. property for affordable housing. We were grateful for the enthusiastic support you gave to us. At a subsequent ACHC meeting, the members voted to ask you to place on the first appropriate Town Meeting warrant an article that would authorize the Board of Selectmen to sell tax title lots. This would allow the ACHC to further explore development options for that site and would also make other similar properties available to us. It is our understanding that Town Counsel would require a "standing" town meeting vote each year to release any tax title property for disposition. This would not be an article specific to the Willow St. property or to affordable housing uses of such properties but rather to allow the town to dispose of any properties acquired in this manner.

At the same time, the ACHC plans to pursue an option suggested to us by John Murray, to use the New View Gift Fund to reimburse the town for the back taxes and the cleanup of the Willow St. property. This would clear the title for the property, giving ownership to the town. The Board could then develop it in any appropriate way. We would be interested in providing a minimum of one affordable home on the site. This would be part of the First Time Home Ownership Program for moderate-income families, regulated by the state.

We are sensitive to the desire of the Board to restrict the warrant articles for the 10/25/99 Special Town Meeting to those related to the sewer project. If you decide to not add this to that warrant, we would accept the next available town meeting.

Thank you for your continuing support of our efforts.

Sincerely,

Nancy Tavernier, Chairman  
Acton Community Housing Corp.

ACTON COMMUNITY HOUSING CORPORATION  
P.O. Box 681  
Acton, MA 01720  
(978) 263-4776

July 30, 1999

Acton Board of Selectmen  
Acton Town Hall  
Acton, MA

Dear Board Members:

At the July 29, 1999 meeting of the Acton Community Housing Corporation, members discussed the potential availability of the Willow Street property for affordable housing opportunities. It is our understanding that the parcel has now been cleaned of its contaminants and is in the process of being prepared for disposition.

Last fall, we expressed an interest in developing the site for an affordable housing program, suggesting that 2 residential units would be appropriate and allowable for the site. Both Doug Halley and Garry Rhodes verified the feasibility of such a plan from both a wastewater disposal and zoning point of view. At that time, Ron Peabody was involved in purchasing properties in Acton, as part of the Bellows Farm outreach program, to fulfill his obligation to supply 6 single family homes per the Bellows Farm subdivision permit. He had expressed interest in providing new construction for a number of the 6 houses and considered the Willow Street site at our suggestion. Since he is now nearing completion of his outreach program, we are shifting gears at this time.

When the parcel is put out for bid by the town, we would like to request that should a multi-family residential use be made of the site, that at least one unit be earmarked for the First Time Home-buyers program under the state Local Initiative Program. Both we and the state would require the unit to be a 3 bedroom unit.

We have been extremely pleased with the professionalism with which Ron Peabody and his consultant Mark O'Hagan have administered the purchase and sale of the 6 properties, the final 3 are currently in the "purchase and sale" stage. The new owners of these homes have been exceedingly grateful to the town of Acton for its support of such an important program.

As a result of the updated Master Plan, the community has once again reaffirmed its interest in promoting affordable housing opportunities. Our proposal speaks directly to Action Strategy H-2: "Seek opportunities to acquire buildable Town-owned properties that might be suitable for donations toward the development of affordable housing.

We would be happy to meet with you or staff to better define our proposal. We would be available for your August 17 meeting. Thank you for your continuing support of the ACHC.

Sincerely,

Nancy E. Tavernier, Chair  
ACHC

# PALMER & DODGE LLP

ONE BEACON STREET, BOSTON, MA 02108-3190

NORMAN P. COHEN  
(617) 573-0386  
ncohen@palmerdodge.com

TELEPHONE: (617) 573-0100  
FACSIMILE: (617) 227-4420

March 3, 1999

*ACHC buy land?*

Mr. John Murray  
Assistant Town Manager  
472 Main Street  
Acton, MA 01720

Dear John: (Town of Acton -ACHC)

You have sent me a copy of Nancy Tavernier's memorandum relating to the proposed construction of two single family units on a parcel of land on Willow Street. The parcel of land was acquired by the Town for nonpayment of taxes.

*Pursue that*  
1. Assuming that the Town has foreclosed on the tax lien and is now the owner of the parcel, a town meeting vote would be required to authorize the Selectmen to transfer the parcel. (It is my understanding that Acton does not have a standing town meeting vote previously passed authorizing the Selectmen to sell tax title lots.)

2. If the parcel is to be sold to a developer, the Town must comply with the provisions of G.L. c.30B with respect to advertising the sale and disposing of the parcel. *[The Town can list any requirements it has for the future use of the property.]* *?*

3. The property does not have to be auctioned for sale if the Town now holds clear title to the land. The Town cannot set an arbitrary price for the parcel in consultation with one developer.

4. I shall need to see the terms of the gift which was given for affordable housing to determine whether it could be used in connection with the sale and development of the Willow Street parcel.

*Doug*  
5. The questions relating to the clean-up of the parcel cannot be answered without more information. Generally speaking, ongoing maintenance depends on how the clean-up is being carried out, although based on the limited information provided it would not appear that it would be ongoing in this case. There is always the potential for a landowner being responsible for clean-up costs when it is found that his or her property is the source of pollution. Again, however, without more detailed information, a definitive answer cannot be given.

If the project is to go forward, I would be glad to look into these questions in more detail.

Very truly yours,

*[Signature]*  
Norman P. Cohen

NPC/jf

*over*  
#2. if we buy (approp or gift) pay taxes = clear title  
once we have clear title we can sell w/  
conditions. Town Mtg action preferable  
to transfer parcel

~~prop~~ If town (ACHC) wants to buy it, article  
to approp. back taxes. Town pays self.

gift option no approp but prefer go town mtg  
for vote

Buy willow w/ gift \$, must have TM vote  
approval to give <sup>away</sup> or sell. to dispose of it.

If disposing (w/ TM approve) we can  
put any condition on land (covenant)

**Acton Housing Authority**

---

**From:** "John Murray" <jmurray@town.acton.ma.us>  
**To:** "Nancy Tavernier" <tavern@ma.ultranet.com>  
**Cc:** "Acton Community Housing Corporation" <ACHC@town.acton.ma.us>; "Board of Selectmen" <BOS@town.acton.ma.us>  
**Sent:** Thursday, December 06, 2001 1:37 PM  
**Subject:** RE: Willow St. property

**Please note my answers below. Many of my answers state that the questioned asked is a policy question. Consequently, I have copied the Board so that it may begin to formulate an appropriate policy decision.**

**John Murray**

-----Original Message-----

**From:** Nancy Tavernier  
**Sent:** Thursday, December 06, 2001 10:45 AM  
**To:** John Murray  
**Cc:** Acton Community Housing Corporation; Don Johnson  
**Subject:** Willow St. property

Hi John,

We have been exploring conceptual plans for putting affordable housing on the town-owned Willow St. land. Here are some of the ideas at the moment.

1. The property could hold perhaps 3 or 4, 3-BR units assuming the septic capacity is up to 12 bedrooms. This can be developed under current zoning as rental property so long as one of the units was owner-occupied with that definition subject to interpretation. e.g. if the units are permanently affordable, under town oversight, that might be considered "owner-occupied". In lieu of using the special permit option, a comprehensive permit could be utilized instead.
2. We have determined there is state development funding for affordable housing that can be granted if the project has a minimum of 3 affordable units. The grant could be \$65,000 per unit for development and not all the units would have to be on site. e.g. 2 units on site and one unit (a purchased condo, off site).
3. The affordable condo units would sell for \$84,000 using the current state guidelines if this were constructed as a home ownership project. If the project were a rental property the rents for the affordable units would be in the \$950-1000/mo. range using current state guidelines.
4. We estimate the following resources would be available to develop this site for 3 units of affordable housing:

\$100,000	New View Affordable Housing fund
195,000	3 x \$65,000 grant from the DHCD
<u>255,000</u>	3 x \$85,000 purchase prices
\$550,000	TOTAL
5. If the development were for 4 units, then the 4th unit would either be sold or rented at market rates, adding more resources to the estimated total.
6. We are considering using manufactured town house type construction for this site but do not

12/7/01

have hard cost figures for that.

7. We are aware that the original appropriation (\$125,000) from the town to clean up the property has to be factored into this project to some extent but also that there is pending litigation to recoup those costs.

We do not want to proceed too much further without knowing what all the options are out there. We understand a private developer might be interested in developing the site and providing affordable unit(s). I believe it is fair to say the preference of the Board of Selectmen is to support affordable housing in some configuration for any town-owned land and that the ACHC would be given the right of first refusal when this land becomes available. We have been operating on that assumption. It is important for any developer to know that not only is that the assumed use of the property but that there is state funding (\$65,000 per unit) available if 3 units are provided on or off site.

Here are some questions that we need answers to:

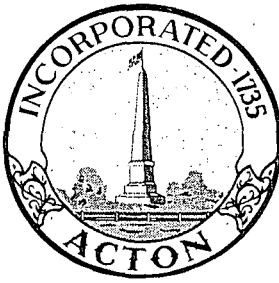
1. If the property is auctioned off to a private developer, will there be a RFP process specifying the number of affordable units that need to be provided, whether rental or ownership, as a requirement for ownership? Conditions could be added.
2. What costs for clean up will need to be covered by the sale of the property? It appears that the Town will spend the full \$125,000 for clean up. In addition, \$x of back taxes were due when the Town finally obtained the property and there are legal expenditures involved. Legally the property needs to be purchased from tax possession. The question of whether the Town, ACHC, or a developer buys the property is a policy question. The question of recouping the clean-up costs also is a policy question for the BOS.

We have received a judgment against the previous owner for the legal and clean-up costs, however it appears that the previous owner is judgment proof.

3. Will the town indemnify the new owner(s) in regard to the 21E status of the property? Again, this is a policy question. I can imagine any answer may have legal implications. If you want to respond by email, that is fine, but if you would rather talk it through then give me a call at your convenience.

Thank you.

Nancy



**TOWN OF ACTON**  
472 Main Street  
Acton, Massachusetts, 01720  
Telephone (978) 264-9612  
Fax (978) 264-9630

**F. DORE' HUNTER, Chairman**  
**Acton Board of Selectmen**

---

July 13, 2004

Miryam Bobadilla  
DHCD  
100 Cambridge Street, Suite 300  
Boston, MA 02114

Dear Ms Bobadilla:

The Acton Board of Selectmen voted on July 12, 2004 to endorse the application for Priority Development Funds submitted by the Acton Community Housing Corporation, a Selectmen-appointed town board.

The Town seeks these funds to determine the feasibility of developing a specific parcel of town-owned land for multi-family housing that would contain up to four family units with a mix of household incomes. To determine the viability of the proposal, the Town will need to have a consultant prepare a financial feasibility study, a preliminary architectural and site plan design, a site evaluation, and a Request for Proposals that can be used for purposes of public bid requirements. The Town has invested significant funds in remediating this site and seeks to maximize its potential for redevelopment.

Acton has recently completed an EO418 Community Development Plan that lays out options for creating more affordable housing choices. Among these options are the development of town-owned land, creating affordable units in the village core areas, using Smart Growth principles, and building small scale properties that are consistent with the neighborhood character. These specific options would be met with the development of this parcel of land. Pre-development planning is needed to maximize the potential redevelopment of this land. This effort will serve as a template for future development opportunities in similar scale projects across the Town.

Acton has an active local housing partnership group, the ACHC, who have toiled for years to increase affordable housing opportunities in this wealthy suburban setting. As the cost of land increases, the Town falls further and further behind in meeting the housing needs of the community. The infusion of state funds from the Priority Development Fund would be a great shot in the arm for housing advocates in the community and would help ensure the success of this proposed development.

Thank you for your consideration of our Town's request for funding.

Sincerely,

  
F. Dore' Hunter, Chairman  
Acton Board of Selectmen

**Acton Community Housing Corporation**

**Nancy Tavernier, Chairman**

**TOWN OF ACTON**

P.O. Box 681

Acton, Massachusetts, 01720

Telephone (978) 263-4776

Fax (978) 266-1408

TO: Community Preservation Committee  
FROM: ACHC  
SUBJECT: Request to change use of CPA funds for Willow/Central feasibility study  
DATE: September 3, 2004  
Cc: Board of Selectmen

The ACHC has voted to request a re-vote of the April 2004 Town Meeting CPA appropriation of \$25,000 intended to finance a consultant to do a feasibility study for the Willow/Central town-owned parcel proposed to be developed for affordable housing. This vote needs to be recommended by the CPC to the BOS and then to a subsequent Town Meeting. Since the Selectmen are planning a Special Town Meeting in October and will be closing the warrant for that meeting at their September 13 meeting, the timing is critical. We would ask the CPC to vote to recommend this change at your September 9 meeting.

This was the description in the Town Warrant of the appropriation referenced above:

*The requested appropriation will enable the Acton Community Housing Corporation (ACHC) to hire a professional consultant to study the feasibility of creating three or more affordable housing units on one property located at 214 Central Street and 28 Willow Street.....The study will examine all aspects of the potential project, including neighborhood feedback, funding sources, design options, unit mix, and financial viability.*

This is a Good News story. In July, the ACHC applied to the DHCD for funding for this identical activity from a new state grant program called Priority Development Fund. This new program was announced in early June, just a few months after the Town Meeting vote. The program seemed to be tailor made to this project as it stressed "smart growth", cleaning up of Brownfield sites, redeveloping property rather than creating sprawl, and town owned land.

Initially the DHCD was hesitant to approve our request since we obviously had an alternative funding source for the work (CPA \$) but ACHC persisted with the request explaining that the CPA funds could very well be used in another capacity for the same project to help offset the cost. It is the first time ACHC itself has received state funds for affordable housing. On August 25, we were notified of the award of up to \$25,000 to do the necessary work on Willow/Central to determine what kind of housing development would be feasible. This is a definite feather in our cap and the DHCD has become VERY interested in this project and is even suggesting there may be other funding sources to aid in the development costs.

We seek to have the Willow/Central CPA appropriation moved into the Community Housing Fund. While this actual Fund has not been set up due to rulings from Town Hall about the lack of statutory authority to set up such a fund, we would ask that this \$25,000 be designated in the same manner the housing fund was voted in April.

This is the wording from the Town Meeting warrant that we would like to use for the re-voted \$25,000:

*The Community Housing Fund would be used by the Acton Community Housing Corporation (ACHC), or any other entity that the Board of Selectmen may determine, in support of community housing for purposes allowed under the Community Preservation Act, including but not limited to acquisitions, rehabilitations, and conversions of existing housing stock, new development, refinancing or repurchase of existing affordability restrictions about to expire, purchase of new affordable housing deed restrictions, accessibility modifications of affordable units for persons with disabilities, and assistance to low- and moderate-income buyers with mortgage costs, down payments or closing costs. The Community Housing Fund would be established as a special fund of the Town of Acton under the control of the Board of Selectmen.*

Nancy Tavernier, associate member of the CPC, will be out of town for the Sept. 9 CPC meeting and the Sept. 13 BOS meeting so we would request that Walter Foster be the point person for this request. It is our hope that the warrant article could be put on Consent for the Special Town Meeting as it is really just a housekeeping article in our opinion. Betty McManus will be in attendance at the CPC meeting should you have questions.

Our motivation to get this change implemented is to allow the \$25,000 to be accessible for other affordable housing uses in 2004-5 rather than being locked into a use that will not take place. It is our understanding that any unspent CPA appropriations will revert to the CPA fund at the end of the funding period. We do not want that to happen with this appropriation. We have already earmarked the Community Housing Fund for \$25,000 of proposed spending. This infusion would allow us to not only consider other affordable housing uses but also use it for Willow/Central activities that may arise in the interim.

Thank you for your attention.

**Betty McManus**

**From:** "Tavernier" <ntavern@comcast.net>  
**To:** <cpc@acton-ma.gov>  
**Sent:** Friday, September 03, 2004 12:50 PM  
**Subject:** ACHC report on CPA activities

*2nd & 3rd in Nov. -  
 Dear line 15000*

CPC Members,

This is a report from ACHC in regard to the two CPA appropriations that were granted at the April Town Meeting.

Appropriation #1 Willow/Central feasibility study \$25,000

See ACHC memo of 9/3/04 that explains why ACHC has not spent any of this appropriation and does not plan to for its stated purpose

Appropriate #2 Community Housing Fund \$25,000

With this proposal, ACHC requested to have an endowed Housing Fund established at Town Hall into which the CPA funds and other potential revenues (gifts, excess profits, grants etc.) for the specific purpose of affordable housing activities could be held. Unfortunately, this has not happened and according to John Murray, there is no mechanism to create such a fund unless a Housing Trust Fund is set up. That would take a separate town meeting vote and is quite complicated. The other option open to ACHC due to its special powers under the Home Rule petition that established them as a town board, is to put the housing CPA funds into a separate bank account under the control of the ACHC. At this time, we have not pursued that option. The way the use of this appropriation has been left with the Town Administration is the understanding that when we identify a use for the funds, the Town will provide the funds. If the appropriation is not used by the end of the funding period, the funds will flow back to the Town's CPA Fund.

To date the ACHC has voted to use these funds in the following manner:

1. \$15,000 (approximately) the value of one sewer betterment to be applied to the two affordable units proposed for Fort Pond Brook Place to be filed as a 40B with the ZBA shortly. This will result in approximately \$7500 being applied to each of the affordable selling prices thereby reducing the sales price from a proposed \$187,000 to \$179,500. In effect the Town will pay itself from the CPA fund, placing the \$15,000 into the Sewer Enterprise Fund. This transfer will take place some time after Nov. 2004.
2. \$5000. This amount will be deposited into the sewer betterment account for an affordable unit located in the Dunham Park development off High St. In 2001, an existing ranch house was retained as part of a new development to be sold to an eligible affordable family. Through the use of this offsetting amount, the price of the home is going to be held to \$150,000 which will be affordable to a household with an income at 60% of the AMI. This transfer will take place after the sale of the home is completed, sometime in November.
3. \$5000-10,000 to complete the Housing Plan. One of the most important recommendations in the Comprehensive Permits section of the new Community Development Housing Plan is: "The Board of Selectmen and Planning Board should jointly adopt a comprehensive permit policy..." The report lists a number of suggestions about what this joint statement could say. ACHC is very interested in this

suggestion.

Because ACHC believes that Judi Barrett would be an effective facilitator for this activity and would “get it done”, we have voted to recommend the use of the CPA Housing Fund to extend the contract for COG, Inc to allow for the speedy completion of this task. We do not know how much it would cost to do this work but do not think it would exceed \$10,000.

We look forward to developing proposals for the new funding round and will hope to have the above funds actually expended by the proposal deadline.

Thank you.

Nancy Tavernier

## **Acton Community Housing Corporation**

**Nancy Tavernier, Chairman**

**TOWN OF ACTON**

P.O. Box 681

Acton, Massachusetts, 01720

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TO: Board of Selectmen  
FROM: ACHC  
SUBJECT: Willow/Central Update  
DATE: October 18, 2004  
Cc: CPC

The ACHC would like to update the Board on the activities related to the Willow/Central proposed development. Here is the progress to date:

1. In August, ACHC was awarded a \$25,000 grant from DHCD and MassHousing to fund the site analysis, preliminary design, and feasibility study for the town-owned parcel on Willow and Central. An award letter has been received and the Town and MassHousing have executed the contract for this initial work. The following conditions apply:

- Preliminary design of site and septic system \$5000
- Preliminary architectural design \$5000

After this initial work is done, it will be determined whether or not the site is buildable. If so:

- The Town will apply to amend the contract to include an additional \$15,000 to hire a consultant to determine whom and how to develop the property, including final site plan, financial feasibility, who is the final owner, etc.

2. On October 1, ACHC put out Requests for Quotes for the site analysis and sewage disposal design. Responses were due on Oct. 15.

- Requests were sent to three local engineering firms
- Quotes were received on Oct. 15. They were: \$4200, \$6000, \$7500.
- ACHC is currently checking out the lowest bidder and expects to award the contract to them.
- The work on site will commence immediately and must be completed by November 30.

3. ACHC will begin to prepare a new RFQ for the Preliminary Architectural design but will not issue it until the final sewage disposal capacity is known for the parcel since that will determine the number of bedrooms and units and the placement of the units on site.

4. ACHC will be preparing a CPA proposal for the next funding round. Since the specific design will not yet be known for this site, it will be a request for general affordable housing

funding that may be applied to this project should all the pieces fall into place in the next 6 months.

The ACHC will continue to keep the Board informed about the progress of this proposal. Roland Bartl is the staff contact for the project with Doug Halley helping out with the initial site work. At some point in the future, we will hope to reopen the question with the Board about the clean-up costs and what level of reimbursement the Town may or may not request. That remains an outstanding question that will need to be factored into the feasibility study pro forma in the future.

Should you have any concerns about these activities, please contact us immediately.

Thank you.

**Acton Community Housing Corporation**  
**Willow Street / Central Street**  
**Affordable Housing Development - Update**  
7/7/05

**GOAL:** To seek a commitment from the Board of Selectmen to allow the ACHC to issue Requests for Proposals to develop the town-owned Willow-Central parcel for low or moderate income housing based on the proposed design.

**A. SITE HISTORY (Nancy)**

1. Tax taking of parcel mid-90's
2. BOS agreed to allow ACHC to pursue affordable housing proposal (2003)
3. CPA funds voted 4/04 to study and design affordable housing development
4. DHCD/MassHousing grant \$25,000 awarded 10/04
5. Phase 1 of study and design began 10/04 (\$10,000)
6. Phase 2 (\$15,000) to begin after BOS meeting on 7/18

**B. OBJECTIVE OF ACHC EFFORTS (Nancy)**

1. To build a small scale affordable housing development that would meet local zoning (up to 4 attached units, one owner-occupied) and board of health regulations AND would be pleasing to the neighborhood.
2. To create a model for affordable housing development that could be used in other similar locations in town and in other suburban communities.
3. After preliminary design necessitated 2 buildings on the site, the local zoning requirement for attached dwellings could not be met. A comprehensive permit will be required.

**C. TOWN FEEDBACK ON SITE (Ryan)**

1. Neighborhood Meetings (2 meetings held)  
First meeting – neighbors requested small units and all affordable  
Second meeting – neighbors reviewed design and were very pleased
2. Planning Board Meeting
3. Town Meeting discussion (4/04, 10/04 CPA votes and discussion of Willow/Central; 4/05 vote on tax title land re: Willow/Central)

**D. PHASE 1 Part 2 Septic design (Ryan)**

1. Hired engineer to do perc tests, septic plan, site layout and building foot prints
2. BOH approved plan, meets local regulations
3. ~\$5000 expended from state grant

**E. PHASE 1 Part 2 Preliminary Architectural design (Ryan)**

1. Put out RFP for architect, 7 firms applied for the \$5000 contract
2. Firms were eager to do the design, this is an attractive concept
3. Architect selected who is particularly sensitive to historic neighborhood and preservation of existing character
4. Design created for duplex (2 and 3 BR units) on Central St. side; bungalow (3 BR) on Willow St. side
5. Need to do a comprehensive permit to allow 2 buildings on lot
6. ~\$5000 expended from state grant

**F. DEVELOPMENT COST SPREADSHEET (Ryan)**

1. Total Project Cost and Financing Gap
2. Scenarios for number of affordable and market units AHA purchase one 3-BR unit for low income rentals plus 2 first time homebuyer units for households at 70% A.M.I.

**G. PHASE 2 OF STUDY AND DESIGN BEGINS 8/05 (\$15,000) (Nancy)**

1. MHP feels it is feasible and they are going to help us find source to help fill part of the financing gap.
2. Possible state funding source is HDSP (heads-up) program that is designed for Village in-fill, revitalization, Smart Growth, small projects.
3. The next part of the grant, \$15,000 will be used
  1. to hire a consultant to assist ACHC in applying for the Comp. Permit, LIP approval, and prepare RFP
  2. to prepare studies and filings for application
  3. to seek legal review of the recommended process
  4. to fund expenses and filing fees

**H. ACTION PLAN (Nancy)**

1. July 18 Meet with Board of Selectmen
  - a. Present project to date
  - b. Vote to Transfer control of property on paper to ACHC with BOS vote contingent on conducting future RFP/Bid process, according to state bid laws
  - c. Agreement in concept with the proposed design and unit configuration
2. ACHC will apply to DHCD LIP program to get approval from a subsidizing agency needed to have standing with ZBA
3. ACHC will apply to ZBA for a Comprehensive Permit

- a. ACHC needs "site control"
  - b. LIP approval
  - c. Complete application with all required filings
4. Once Comprehensive Permit approval is granted, ACHC will prepare RFP, with help of consultant, to put project out to bid with the Comp Permit, LIP approval, approved Wastewater Disposal plan, and architectural design to be responded to.
5. ACHC will select the developer whose proposal best meets the RFP.
6. ACHC will apply for state funds.  
ACHC will make the land "free and clear. CPA and other local resources will be used for this payment. Ownership will transfer from Town/ACHC to the developer.

**I. OTHER STEPS (Nancy)**

1. Board of Selectmen July 18
2. Planning Board Meeting July 26<sup>th</sup>
3. Input from Neighborhood

## **Acton Community Housing Corporation**

**Nancy Tavernier, Chairman**

**TOWN OF ACTON**

Acton Town Hall

472 Main Street

Acton, Massachusetts, 01720

Telephone (978) 263-9611

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TO: Board of Selectmen

FROM: Nancy Tavernier, Chair  
Ryan Bettez, Vice Chair

SUBJECT: Proposed affordable housing development on town-owned land at 28 Willow St. and 214 Central St.

DATE: July 14, 2005

We look forward to meeting with the Board of Selectmen on July 18 to present an update on a proposal for development of the Town-owned parcel at 28 Willow Street and 214 Central Street in West Acton.

After the Board gave us the green light in 2003 to put together a proposal for the reuse of the Willow/Central parcel, we have given much thought to the proposal. Our objectives were:

- To reach out to the neighborhood and to the community as a whole to build something that everyone could be proud of. We see this as a great chance to build something that enhances the neighborhood.
- To build a small scale affordable housing development that would meet the local zoning bylaw, which allows up to 4 attached units with one owner-occupied, and local Board of Health wastewater design regulations.
- To create a model for affordable housing development that could be used in other similar in-fill locations in town and in other suburban communities.

ACHC has completed Phase I of the preliminary design using \$10,000 of the PDF State grant. This produced a site analysis and an approved wastewater disposal plan, preliminary architectural designs for three units of affordable housing, and a construction cost estimate. ACHC has been working closely with a great Acton neighborhood, gathering their input on the scale and design of the proposed project. The neighbors have truly been an exceptional group of people who not only love their neighborhood but who also respect the need for affordable housing even if it is built in their neighborhood.

ACHC hired an architect who has designed a duplex farmhouse unit on the Central Street side and a bungalow on the Willow Street side of the parcel for this proposal. The design of the units is consistent with the neighborhood character and architecture. Because the preferred design called for

2 buildings on the site, rather than a group of attached units on one side of the parcel permitted by zoning, a Comprehensive Permit was required.

The purpose of meeting with the Board is to prepare for the next round of necessary approvals by the State and Town. ACHC is ready to begin Phase 2 using the \$15,000 balance of the State grant funds. This will entail applying to the DHCD for a LIP project approval, filing for a Comprehensive Permit with the Zoning Board of Appeals, and preparing a Request for Proposals (RFP) based on the approved design.

This meeting with the Selectmen is the first step in the process. ACHC is seeking a Board of Selectmen vote granting us site control of the parcel, contingent on putting the development out to bid after the permits have been obtained, and agreeing to transfer ownership to the selected developer. Site Control will give the ACHC the legal standing to first apply to DHCD and then to the ZBA. To apply for approval from both of these agencies, the Applicant (ACHC) has to demonstrate 2 things: 1) It is a public agency, a non-profit organization, or a limited dividend organization, and 2) It has site control of the location of the proposed development. Because the site is a tax-taking parcel, the Selectmen have the legal authority to make decisions about its disposition and this is the sequence that ACHC recommends, subject to the approval of Town Counsel.

This is the proposed ACHC Action Plan:

1. July 18 Meet with Board of Selectmen to seek vote that would give ACHC "site control" of the property and determine an appropriate land acquisition cost.
2. ACHC will apply to DHCD LIP program to get "site eligibility from a subsidizing agency", which is necessary for the next step. We will need the Board's signature on the LIP application at a future date.
3. ACHC will apply to ZBA for a Comprehensive Permit. A comprehensive permit is needed because the units are not attached, as required by the parcel zoning, triggering the need for zoning variances.
4. Once the Comprehensive Permit is approved, ACHC will prepare an RFP, with the help of a consultant. The project will be put out to bid using the required state bid regulations. Included in the RFP will be the Comp. Permit, DHCD LIP approval, Wastewater Disposal plan, and preliminary architectural design.
5. ACHC will select the developer whose response most closely matches the conceptual design.
6. A Land Disposition Agreement will be negotiated with the Board of Selectmen. We have a Land Disposition Agreement from the Town of Orleans that demonstrates we can be very specific on what is to be built and, if it is not, the land will be returned to the town.
7. Ownership will transfer to the developer who will then develop the property according to the Comprehensive Permit and the Land Disposition Agreement.

A second request for discussion is the question of land acquisition costs. ACHC has plugged into the Pro Forma \$175,000 for land acquisition. This is money that would go from the CPA Fund directly back to the Town to reimburse it for the Cleanup costs of \$65,096, legal expenses of \$3,786, and back taxes (since 1983) of \$108,609 for a total of ~~\$177,491~~. This would allow ACHC to make the land available free and clear for the developer. ACHC would like to have a discussion about this dollar amount since this is an important piece of the puzzle. ~~\$~~202,548

We have transmitted a complete information packet on the Willow/Central proposal to the Board for background reading in PDF format. We look forward to updating the Board, sharing our successes to date, and answering any questions you may have.

## MEMORANDUM

TO: Don P. Johnson, Town Manager

FROM: Stephen D. Anderson, Town Counsel

RE: Acton/ACHC: Proposed Development of Affordable Housing on Town-Owned Tax Title Land at 28 Willow Street and 214 Central Street

DATE: July 16, 2005

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The Town is the owner by tax taking of the real property at 28 Willow Street and 214 Central Street, Acton, Massachusetts (the "Site") by tax title takings in Land Court Case Nos. 112320 T.L. and 112319 T.L. (Judgments dated May 4, 1998). After the Town addressed environmental problems associated with the Site, the Acton Community Housing Corporation ("ACHC")<sup>1</sup> has developed a proposal to reuse the Site for a new affordable housing project. ACHC has asked the Board of Selectmen to vote to grant control of the Site to ACHC, contingent on ACHC putting the development out to bid and transferring Site ownership to the selected developer after ACHC has obtained necessary permits for the development.

As custodian of the Town's tax title properties, the Town Treasurer has inquired as to the appropriate procedure for disposition of this tax title property. This memorandum addresses that procedure and recommends an appropriate course of action so that the proposed project can continue to proceed forward at this time.

### Options for Disposing of Tax Title Property

In a new case just decided on June 29, 2005, entitled *Board of Selectmen of Hanson v. Lindsay*, 444 Mass. 502 (2005), the SJC described the three methods for disposing of tax title property (emphasis added):

Pursuant to G. L. c. 60, § 77B, "the selectmen of any town which holds property acquired by foreclosure of tax titles or acquired under [G. L. c. 60, § 80,]<sup>2</sup> may

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<sup>1</sup> ACHC is "a non-profit housing corporation ... subject to the supervision of the board of selectmen of the Town of Acton." (See Chapter 143 of the Acts of 1996, § 1).

<sup>2</sup> Section 80 provides that,

If no person bids at such a sale [under Chapter 60, Section 79 regarding a sale at tax auction without foreclosure] or if no bid deemed adequate by the treasurer is made thereat and if the sale has been adjourned one or more times, the treasurer shall then and there make public declaration of the fact, and if no bid or no bid deemed adequate as aforesaid is then made he shall give public notice that he purchases for the town by which the tax is assessed; or if the person to whom the land is sold does not within ten days pay to the treasurer the sum bid by him the sale shall be void and the town shall be deemed to be the purchaser of the land. If the town becomes the purchaser hereunder, the treasurer shall execute to it a deed which shall set forth the fact that no bid or no bid deemed adequate as aforesaid was made at the sale or that the purchaser failed to pay the amount bid, as the

appoint a custodian who shall have the care, custody, management and control of all property heretofore or hereafter so acquired by said . . . town. . . . The custodian, acting on behalf of the . . . town, may, notwithstanding any provision of law, ordinance or by-law inconsistent herewith, **sell at public auction** any such property" after providing proper notice of the sale. . . . General Laws c. 60, § 77B, further states that "[t]his section shall not be construed to prevent a . . . town from **disposing of such property under [G. L. c. 40, § 3], or in any other manner authorized by law.**"

The three methods are thus:

- (1) the tax auction process, 
- (2) the c. 40, § 3, process, and
- (3) any other manner authorized by law. 

Whichever way the Town chooses to go, several miscellaneous requirements apply to a sale of tax title property, the most significant of which from a monetary standpoint is that the Town must receive a payment in lieu of taxes from the buyer, calculated in accordance with G.L. c. 44, § 63A.<sup>3</sup>

#### The Tax Auction Process:

The tax auction process does not readily lend itself to ACHC's goal of and methodology for developing affordable housing on the town-owned tax title land at 28 Willow Street and 214 Central Street. Accordingly, the auction option will not be considered further in this memorandum.

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case may be. Such deed shall not be valid unless recorded within sixty days after the sale under this section; and the title of the town to land conveyed thereby shall be absolute upon the recording of said deed in the proper registry of deeds within such sixty days.

<sup>3</sup>

Other requirements are, for example:

- The buyer must provide the Town a signed statement that the buyer has not been convicted of arson and is not delinquent in the payment of real estate taxes in the town in which the property is being sold. G.L. c. 60, § 77B.
- The Town must also obtain a disclosure of beneficial interest statement from the buyer as required under G.L. c. 7, § 40J.
- The sale is not exempt from the Title 5 inspection requirements of 310 CMR 15.301(f), as applicable.

### Other Manner Authorized by Law

Special Home Rule legislation or other procedures authorized by law could provide a specific method for the disposition of tax title property. In the absence of such law or legislation, however, this option will not be considered further in this memorandum.<sup>4</sup>

### The c. 40, § 3 Process

In the *Hanson* case, the SJC described the land disposition process under c. 40, § 3, as follows (emphasis added; other emphasis deleted):

Pursuant to G. L. c. 40, § 3, "[a] town may hold real estate for the public use of the inhabitants and **may convey the same by a deed of its selectmen thereto duly authorized, or by a deed of a committee or agent thereto duly authorized . . .** and may make such orders as it may deem necessary or expedient for the disposal or use of its corporate property" (emphasis added). General Laws c. 40, § 3, further provides that "[a]ll real estate . . . of the town, not by law or by vote of the town placed in the charge of any particular board, officer or department, shall be under the control of the selectmen, except as is otherwise provided in this section or [G. L. c. 40, § 9, pertaining to building space for veterans' organizations and armories]."

The reference in Section 3 to "duly authorized" means that the Board of Selectmen, the committee or the agent must have received the requisite vote of Town Meeting to dispose of the property in question (*id.*, emphasis added):

**It is the inhabitants of a town, acting at a town meeting, who have the power to encumber and dispose of real estate,** with certain limited exceptions, pertaining to leases, that are not material in this case.

In general, Town Meeting exercises its powers over the disposition of Town-owned property by following the procedures of G.L. c. 40, § 15A (requiring a two-thirds vote to transfer property held for a specific purpose)<sup>5</sup> and G.L. c. 40, § 15 (requiring a two-thirds

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<sup>4</sup> Special legislation established ACHC. See Chapter 143 of the Acts of 1996. ACHC can acquire and dispose of real property (c. 143, § 2, referencing G.L. c. 156B, § 9(e and f)), particularly with the approval of the Board of Selectmen (c. 143, § 2(d)). Thus, ACHC has the power "with the approval of the board of selectmen, to acquire or lease, by purchase or otherwise, and to own, hold and use on such terms and conditions and in such a manner as it may deem property and to exchange, grant options on, sell, transfer, convey, assign, lease, pledge, mortgage, encumber, grant liens on and security interests in or to otherwise dispose of, on such terms and conditions as it may deem proper, real, personal or mixed real and personal property or any interest, easement or rights therein and any assets or revenues of the board of directors, as may be necessary or appropriate to carry out its purposes." (c. 143, § 2(d)). However, nothing in c. 143 expressly authorizes the Selectmen to transfer tax title property to ACHC without first going through the procedures applicable to such tax title property. See below.

<sup>5</sup> Section 15A provides that:

vote to dispose of property).<sup>6</sup> Since the Site was not acquired in the first instance for a specific purpose and has not since been dedicated to a specific purpose, the procedures of G.L. c. 40, § 15, not § 15A, apply to its disposition:

1. First, the “officer of a ... town having charge of any land ... taken for such ... town, otherwise than by purchase, [must notify] the ... the selectmen that, in his opinion, such land, ... is no longer required for public purposes ....” In this case, the officer having custody of the land is the Town Treasurer as the custodian of tax title property. Attached as **Exhibit A** is a simple form of notification which could be used in the present case.
2. Second, the “town by a two thirds vote [must] authorize the conveyance of such land, ... and specify the minimum amount to be paid for such conveyance ...” Under Article 11 of the 2005 ATM Warrant, the Town voted “to authorize the Board of Selectmen to dispose of foreclosed properties acquired by the Town for nonpayment of taxes in accordance with the provisions of Massachusetts General Laws, or take any other

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Whenever a board or officer having charge of land, including land acquired for playground purposes pursuant to the provisions of section fourteen of chapter forty-five, but excluding land acquired for park purposes, constituting the whole or any part of an estate held by a city or town within its limits for a specific purpose shall determine that such land is no longer needed for such purpose, whether such land was acquired before or after the effective date of this section and whether acquired by eminent domain, purchase, gift, devise or otherwise, such board or officer shall forthwith give notice of such determination to the city council of the city or the board of selectmen of the town. At any time after the receipt of such notice, the city council of the city by a two thirds vote of all its members, in the case of a city having a city manager, with the approval of said city manager, and in the case of other cities, with the approval of the mayor, or the town by a two thirds vote at a regular or special town meeting, may transfer the care, custody, management and control of such land to the same or another board or officer of the city or town for another specific municipal purpose, any provision of general or special law to the contrary notwithstanding; provided, that no such transfer shall be valid if it is in violation of any term or condition of the title of the city or town to such land.

In any city or town which accepts the provisions of this paragraph, when land is being transferred for the purpose of constructing low and moderate income housing, the vote required of the city council or the town meeting shall be by a majority vote.

<sup>6</sup> Section 15 provides that,

If any officer of a city or town having charge of any land, easement or right taken for such city or town, otherwise than by purchase, notifies the city council or the selectmen that, in his opinion, such land, easement or right, or part thereof, is no longer required for public purposes, and if thereafter the city council or the inhabitants of the town by a two thirds vote authorize the conveyance of such land, or of part thereof, or the abandonment of such easement or right, or part thereof, and specify the minimum amount to be paid for such conveyance or abandonment, the mayor or the selectmen may, for such amount or a larger amount, and upon such other terms as the mayor or selectmen shall consider proper, convey said land, or part thereof, by deed, or declare said easement or right, or part thereof, to be abandoned. Such declaration, being recorded in the registry of deeds for the district where the land is situated, shall extinguish the easement or right, or part thereof.

action relative thereto. It is unlikely however that a lender financing an affordable housing development on the property in question would be satisfied with this vote alone. Instead, the Town Meeting should be asked to vote a specific authorization to dispose of the property in question and the vote should specify "the minimum amount to be paid for such conveyance."

3. Thereafter, "upon such other terms as the ... selectmen shall consider proper," the Town may convey said land... by deed."<sup>7</sup>

### **Advancement of the Proposed Project Pending Town Meeting Approval**

In the absence of the necessary Town Meeting vote, the Selectmen are not in a position to convey or transfer the property in question to ACHC at the Board meeting on July 18, 2005. However, that does not mean that ACHC's proposed project must grind to a halt pending Town Meeting approval.

Rather, assuming the Town Treasurer makes the finding set forth in Exhibit A, the Selectmen can authorize ACHC and Town Counsel to undertake a variety of specific activities in furtherance of the proposed project. A suggested Motion to accomplish this is attached as **Exhibit B**.

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<sup>7</sup>

The Uniform Procurement Act, G.L. c. 30B, § 16, does not apply to the disposition of tax title land through the public tax auction process, but it does apply to a disposition of tax title property under G.L. c. 40, §§ 3 and 15.

**Acton Community Housing Corporation**

**Nancy Tavernier, Chairman**

**TOWN OF ACTON**

Acton Town Hall

472 Main Street

Acton, Massachusetts, 01720

Telephone (978) 263-9611

Fax (978) 264-9630

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TO: Board of Selectmen  
FROM: Nancy Tavernier, Chair ACHC  
SUBJECT: Willow/Central project – roadblocks and detours  
DATE: 1/27/2006

We wish to begin by thanking the Board for its enthusiastic support for ACHC's efforts to create affordable housing units on the town-owned parcel known as Willow/Central. This proposal has been a collaborative effort among many players: ACHC, Board of Selectmen, Planning Board, Finance Committee, Health Department, Engineering Department, Town staff, DHCD, MassHousing, Massachusetts Housing Partnership, and the very special supporters in the abutting neighborhood.

Based on the vote that the Board took on July 18, 2005 that sets out the steps to be followed by ACHC and the Town (see attached), we immediately began the process that should ultimately result in the conveyance of the land to a developer who would then build the project based on our design. In September, we applied to DHCD for LIP approval and received it December 9, 2005. That gives us the authority to file for a Comprehensive Permit with the ZBA. In order to file for the permit, ACHC needs to follow the Acton Rules and Regulations for Comprehensive Permits (see attached) that lay out the requirements for the application and the filings submitted. There is an extensive section (#3) that enumerates the contents of the application. These Rules apply to all Comprehensive Permits, whether they are 300 units or 3 units and whether they are done by a for-profit developer or a non-profit. We have come to have an intense dislike of these Rules but that is an issue for another day.

It was immediately apparent that we needed to hire an engineering firm to prepare the engineering and survey work required for these filings. If the Board recalls, we applied for and were awarded a \$25,000 grant from DHCD and MassHousing under the Priority Development Fund. We have expended \$10,000 of that grant for preliminary site and architectural design. The balance of the grant is available for the permit preparation stage. On 12/7/05, ACHC sent an RFP for Engineering and Survey Work to four vendors. We received two bids both essentially the same at ~\$14,000. On December 27, 2005, we selected the firm that we felt best met the criteria and timetable, Stamski and McNary.

Ryan Bettez and I arranged a meeting with the engineering firm and Town Engineering staff to help define and control the extent of the work required. Our proposed three units are the equivalent in impact of two single family homes and as such really only need "minimal" information but that still requires a great deal of engineering work to meet the Acton Rules. Bruce Stamski and Corey York from Engineering have been very helpful in defining what is needed. That meeting took place on Jan. 6 and it was agreed by all that the scope of work was clear. Stamski and McNary agreed to start work as soon as a signed Purchase Order was received from the Town. We assured them it would be signed that week. To date that Purchase Order has not been signed, four weeks after the bid was awarded. Because the engineering work is estimated to take 4-6 weeks, we are now behind schedule by 10 weeks before we can even file for a Comprehensive Permit. The Comprehensive Permit process, in its most expedited schedule, may be 3 months. That puts our projected date of issuing the RFP for a developer, after the Comprehensive Permit is granted, at mid-June if there are no further hitches. If you notice in the July 18 motion, Town Meeting is going to be asked to authorize the Board to convey the property to ACHC for a sum calculated through April 30, 2006 of \$202,548.32. There is no way ACHC can be ready to receive this conveyance by April 30.

We are not sure why there has been a delay in getting the Purchase Order signed. We have never been fully informed about the reasons but have come to understand that it revolves around new procurement rules, design services rules, and as of this week a potential conflict with MGL Ch. 7 which relates to local housing authorities and may therefore apply to any governmental entity. The engineering firm has been told by Roland Bartl they cannot begin the work until these procurement issues are ironed out. They were told that on Jan. 13.

In light of these delays, ACHC wishes to revise the Willow/Central process and is seeking a recommitment from the Board for this project.

Here is ACHC's voted position on a revised proposal:

**Recommended Action #1: We will not file for a Comprehensive Permit.** That responsibility will then fall to the selected developer.

**PROS:** Eliminate the onerous task of ACHC preparing an application using Acton's Rules. Reduce the timetable by 4-5 months. Eliminate the need for expensive engineering.

**CONS:** Reduced interest from developers who now have to take on the same onerous task of a Comprehensive Permit application for a 3 unit project. Increased costs to developers for application preparation and engineering. Less control over eventual development in the absence of an ACHC-owned Permit.

**ACHC RATIONALE:** The delay to the process is muddying the water and putting the project at risk. Since we are not able to keep to the timetable, we are hesitant to get so far out without knowing if there is support behind us. If we can get cooperation from the ZBA and others, we will seek to institute a revised set of Rules for small projects, such as the current DHCD Housing Appeals Committee Model Rules for 40B projects designed for small projects.

(<http://www.mass.gov/dhcd/components/hac/MLRFIN.HTM>) This would benefit the selected developer if done in a timely manner. We would take the lead to get the small scale project rules in place.

**Recommended Action #2:** We would still like to contract with Stamski and McNary for the engineering work that will be required for the future Comprehensive Permit application especially the land survey. We would like to renegotiate their bid to come in lower than the \$10,000 designer services threshold rather than put the revised RFP back out to bid. We want a signed Purchase Order.

**PROS:** Providing the engineering work will reduce the expenses of the developer and make the project that much more attractive. The items required will hold the developer to a certain design standard.

**CONS:** We will continue to be mired in red tape while staff works through the procurement issues.

**ACHC RATIONALE:** We have "free" money from the State that we fought to get for this project. We want to use it. They want us to use it, they have featured this project in the Priority Development Fund annual report.

**Recommended Action #3:** We would like to move directly to the RFP preparation to seek a developer to be the owner and developer of the Willow/Central project. The July 18 motion authorized Town Counsel to prepare the necessary RFP. We would like to have a developer selected prior to April Town Meeting. The relevant warrant article needs to be placed in the Town Meeting warrant.

**PROS:** This would allow the project to be presented to Town Meeting for conveyance with as many "knowns" as possible, the design, the builder, and the payment for the land, assuming CPA approval of ACHC's request. ACHC has provided a copy of a model RFP from the Town of Orleans to Town Counsel that only needs minor revisions in our opinion. There are other examples of projects that mirror our approach.

**CONS:** The Comprehensive Permit would have been a central piece in the RFP and an attractive feature for any interested developers. The lack of it creates an element of unknown for developers since they will have to obtain the Permit at the discretion of the ZBA.

**ACHC RATIONALE:** It allows ACHC to proceed with the proposal and rewards us for the effort we have put into it. It will make it more likely that the land will be conveyed for this important public purpose rather than risking a market sale of the land that we believe would become at a minimum a 4 unit attached dwelling development very much out of character for the neighborhood.

This request to the Board for support of a revised process is intended to be a commitment from the Board to make this happen. You have just approved the Joint Policy Statement for 40B's designed to encourage small scale projects. They don't come much smaller than this. If we cannot get a small town-sponsored project to work, how can we expect private developers to come in with small and more desirable proposals voluntarily? If you choose to recommit to getting this project done, we want to assure you that we will continue to provide the time, the funding and the due diligence required but we will turn to you for help whenever we seem to be stuck.

Members of ACHC will plan to attend the meeting should you have any questions about our request.

To: Peter Ashton  
From: Nancy Tavernier <ntavern@comcast.net>  
Subject: ACHC memo  
Cc:  
Bcc:  
Attached:

Peter,

I am going to spend the day preparing a memo for the Selectmen from ACHC that will leave more unsaid than said. That is difficult for me as you can imagine. The memo will be primarily about the Willow/Central project and we will be seeking a commitment from the BOS that we have your support and that your support will help us over the hurdles that we are encountering in town hall. It will be a carefully worded memo with input from ACHC. You seemed to indicate that you were aware we were having issues so I am led to think that John has been sharing my emails and those of Steve Anderson that originated from our attempt to get the purchase order for the engineering work signed almost 4 weeks ago. We have been mired in mud ever since. We only found out there was a problem early last week, we had been kept in the dark. We are not happy.

As you know, I do not believe in government by intimidation or threat. Having been on the receiving end, I know how destructive it can be. That is why I have not brought you into this fray before. ACHC has tried to operate without being a burden on town hall. We provide our own staff, we write our own grants and RFP's, town hall sends all housing calls to me, we fund our own administrative costs, we negotiate with developers, we monitor 40B's, and I spend over 20 hours a week of my personal time doing this. What we get in exchange for our altruistic activities is appreciation from those we are trying serve which gives us the will to go on. What we get from town hall (Don, John, Steve Anderson) is constant attempts to block almost everything we do. I consider all three of them to be my friends so it pains me deeply to excoriate them but they have become the problem and not the solution, especially when it comes to affordable housing. You are relying on Town Counsel for way too much help, he is making policy for the Town. I even question what level of support he has for affordable housing and the cynic in me wonders if affordable housing equals billable hours. That's not to say his rulings are incorrect and are not based on law, the State is certainly a co-conspirator too when it comes to being a road block to affordable housing with their outrageous laws on procurement for example. But some of the questions being asked of Steve are just plain good common sense and can be figured out by town staff. And some of the questions should never have been asked in the first place.

If it is all about protecting the town, from not-sure who, the safest thing is to do nothing. ACHC did nothing for years when we did not have funds or opportunities to do affordable housing. That all changed in the 90's. The first proposal we put forth was on Adams St. where we had negotiated a DONATION of 4 Deck houses, it got totally shot down at town meeting with HK leading the charge from the FinCom. That is when we became a town board. The next proposal we did was Towne School, started in 2001, and the next was Willow/Central, actually started in 1999. I think you get the drift. We are prepared to go back to doing nothing and be safe from all this agony. We are on the verge of doing so but it would be heartbreaking for us. We all love what we do.

I hate that people like Allen and Sue K., and others get all the attention from Town Hall. I hate it. It has to be stopped. The bad people should not dominate the very limited time and resources of the Town while the good people get jerked around. I know the problems being faced by the BOS and Town are 1000 times more important than ACHC's and I really hate to unload on you. If they would just leave us alone, it would free up a lot of time and money.

This is just a flavor for all the things that will be left unsaid in a memo that will be public information for all the

world to see. ACHC does not intend to attack and intimidate. But you need to know we are at a critical point as a committee. We have never been invited in for oversight, I have requested 3 times, and submitted all the material, to be put on the Town web site. Nada. We have been told to remove the Town Seal from our letterhead. We are treated like a stepchild and yet staff and town counsel seem to spend an extraordinary amount of time tormenting us.

I have not asked for a timed appointment mainly because I am not sure I trust myself to sit in front of a mic but I will be in the audience. And just because I mentioned Oversight does not mean we want one now, for the same reason. Maybe next summer.

I want to get the point across that we are not just looking for a pat on the head, when we say commitment, we mean you have put the authority of the BOS behind our effort to get Willow/Central done and get it done in our lifetime. It is not a threat, and staff may recommend against it, but we need the BOS to step up to the plate either way.

I am going to be away all weekend. I am truly sorry to unload on you but better you than the whole board in a public document.

Nancy

Willow/Central meeting with Town Counsel – Notes  
2/1/06

Attendees: Steve Anderson, Don Johnson, Peter Ashton, John Murray, Roland Bartl, Ryan Bettez, Nancy Tavernier

1. Steve made strong opening statement to make it clear he and town staff want this project to happen and they are not obstacles. His job is to shepherd it through all the legal hurdles.

2. Are we under 30B or chapter 7 or both?

The engineering work is defined by law as Design Services and therefore must adhere to MGL Chap. 7 if the amount is over \$10,000. Having to conform to Ch. 7 means the inclusion of all the Women and Minority Business owner issues. We don't want to go there so we have to get the bid under \$10,000 and then we only have to adhere to Ch. 30B.

3. Our options are to either proceed with the Comp Permit under Acton Rules and try to get the engineering under \$10k or seek waivers from the ZBA to allow a simplified filing for Willow/Central. Town Counsel will agree to draft a set of regulations for small scale projects, show them to Garry, and then the Chair of the ZBA to see if they will buy into it with Willow/Central being the first test case. He will work it through with the ZBA. Ryan and I selected option #2.

4. How do we get the engineering quote to less than \$10,000? We need to go back to the firms and tell them we need to reduce the scope to keep the quote under \$10k. Can we just ask Stamski to do that? No, we must contact both responders (Places and Stamski) with a reduced scope and tell them it must be under \$10k. We do not have to send it to the original 4, only the 2 responders.

5. In determining the chances of getting the quotes lower, the logical reduction could come with the removal of the survey. That was \$1600 in Places and \$2500 in S & M. It was determined the Town Engineering Dept. would do the survey at no cost to ACHC. The estimated cost is \$1200. It will be described as an ANR plan that will be a recordable plan, filed at the Registry that will show a good faith instrument exists for the eventual developer.

6. The process that has to be followed:

ACHC revised the original RFP scope and will call it "First Amendment, reduction to scope". This will then include only those engineering items that are in the DHCD HAC model rules and not the survey. There will be a statement in the amendment that the contract must be kept below \$10,000. The wording will be "The Scope is hereby reduced as follows." We will email the new scope to 2 firms and ask for a response in 1 week. We need to ask Town Counsel, Roland, John and Don review the new scope first.

7. The state Procurement law says the following about selecting a bidder for over \$5000 and under \$25,000, note the lowest price:

(b) The procurement officer shall award the contract to the responsible person offering the needed quality of supply or service at the lowest quotation.

The Procurement Manual says, however,

The RFP process permits you to weigh the relative merits of proposals submitted by competing offerors. You award the contract to the offeror submitting the most advantageous proposal, taking into consideration the proposals' relative merits and prices. **Unlike bidding, the RFP process may not always result in selection of the qualified proposer offering the lowest price.** Only jurisdictions that have appointed a CPO may make procurements using RFPs, and then only when the CPO, or someone with delegated authority, determines in writing that "selection of the most advantageous offer requires comparative judgments of factors in addition to price."

Action items:

1. Steve will draft simplified regs for ZBA and carry through on that
2. Ryan and Nancy will prepare the reduced scope and send it to the 2 vendors
3. The town will commence the survey

**TOWN OF ACTON**

**Building Department**

***INTERDEPARTMENTAL COMMUNICATION***

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**To:** John Murray, Assistant Town Manager    **Date:** March 6, 2006  
**From:** Garry A. Rhodes, Building Commissioner  
**Subject:** Map F-2B parcels 64, 65 and 76

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It was recently discovered that a portion (herein after referred to as triangle parcel) of what has been identified on the Town Atlas as Map F-2B parcel 65 had been conveyed to Map F-2B parcel 76 in 1912. The transfer was done by a deed identified as Book 3743 page 345. You requested, I review the above referenced parcels and determine the zoning implications of a possible transfer of the triangle parcel back to parcel 65. In my opinion it cannot be conveyed back to parcel 65 for the following reasons.

Parcels 64 and 65 are owned by the Town of Acton. Parcel 76 is owned by Flannery. All three parcels are zoned Village Residential. Village Residential has a minimum lot area requirement of 15,000 square feet and a minimum frontage of 50 feet. Parcels 64 and 65 without the triangle parcel have 15,335 square feet and 104.4 feet of frontage on Willow Street. Parcel 76 which includes the triangle parcel has approximately 8,848 square feet and 90 feet of frontage. Parcel 76 is therefore nonconforming. It is important to note the triangle parcel was conveyed prior to Acton adopting Zoning. To convey the triangle parcel to the Town of Acton will make parcel 76 more nonconforming then it is now which is not allowed by the Acton Zoning Bylaw.



**From:** PKAshton@aol.com

**To:** SAnderson@AndersonKreiger.com, ntavern@comcast.net, djohnson@acton-ma.gov

**Cc:** bettezfamly@yahoo.com, rbartl@acton-ma.gov, achc@acton-ma.gov

**Subject:** Re: Acton/ACHC: Willow/Central stop work

**Date:** Mon, 6 Mar 2006 15:25:00 +0000

In a message dated 3/6/2006 10:13:05 A.M. Eastern Standard Time, SAnderson@AndersonKreiger.com writes:

Nancy:

Regarding your suggested "Stop Work Order" on the Willow/Central project pending a potential new direction to be considered by the ACHC board at the 3/8/06 meeting, keep in mind that the following articles are on the draft warrant for the 2006 ATM. The warrant will go to print tomorrow morning. If ACHC is thinking of changing the project, we may want to tweak the language bolded in red below before the warrant goes to print. By making the language more general, we could give ACHC more flexibility to refine its plans between now and Town Meeting. So tell me what you are thinking and I will edit the language accordingly.

Steve

#### **ARTICLE P COMMUNITY PRESERVATION PROGRAM**

(Majority vote) **DIRECT APPROPRIATIONS FROM FUND BALANCE**

##### **B. Land Acquisition and Development â€“ 28 Willow Street & 214 Central Street**

This recommended appropriation will provide funding to the Acton Community Housing Corporation (ACHC) for the acquisition of property located at 28 Willow and 214 Central Streets, and will help cover other costs that the ACHC may incur relative to the development of **up to three units** of community housing on said property. The Town of Acton is the current property owner. The property is shown on the 2004 Town Atlas plate F-2B as parcels 64 and 65. The total acquisition cost will be around \$202,500. The difference will come from existing affordable housing gift funds. With State Priority Development Funding the ACHC has completed a feasibility study for a community housing project on the property and advanced preliminary plans in consultation with the surrounding residents. **The ACHC has received site approval for the project from the Massachusetts Department of Housing and Community Development under the Local Initiative Program.** An application for the project will be submitted to the Board of Appeals for a Comprehensive Permit under M.G.L. c. 40B.

#### **ARTICLE II TRANSFER REAL PROPERTY â€“ 28 WILLOW ST/214 CENTRAL ST**

(Two-thirds vote)

To see if the Town will vote to transfer the real property at 28 Willow Street and 214 Central Street, Acton, MA, which was taken by the Town for nonpayment taxes in Land Court Case Nos. 112320 T.L. and 112319 T.L. (Judgments dated May 4, 1998), and which is held for municipal purposes as provided by Massachusetts General Law, Chapter 60, Section 77, from the tax title custodian to the Board of Selectmen for the purpose of conveyance, and to

authorize the Board of Selectmen to convey such real property on such terms and conditions and for such consideration, which may include non-monetary consideration, as the Selectmen may determine, to the Acton Community Housing Corporation (â€œACHCâ€), a non-profit housing corporation subject to the supervision of the Board of Selectmen pursuant to Chapter 143 of the Acts of 1996, for purposes of re-conveyance by ACHC, with the approval of the Board of Selectmen, to a qualified developer of affordable housing, selected pursuant to a Request for Proposals (â€œRFPâ€), which RFP shall specify restrictions on the subsequent use of the property for residential and affordable housing purposes.

or take any other action relative thereto.

### SUMMARY

This article authorizes the transfer of two abutting parcels, taken by the Town for taxes and remediated by the Town under the direction of a licensed site professional, to the Acton Community Housing Corporation for the development of **a total of three units of housing in two buildings to be newly constructed on the property.** The conveyance from the Town to ACHC would be subject to the approval of the Selectmen, as would the authorization for re-conveyance of the property by ACHC to a private developer pursuant to an RFP process. Reuse restrictions imposed in the RFP will require the developer to construct the housing in accordance with ACHCâ€™s requirements, **to restrict at least two of the units** in perpetuity for affordable housing purposes, and to conform to the Board of Appealsâ€™ conditions imposed in a c. 40B permitting process. **ACHC has reviewed the proposed building designs with neighbors, many of whom have expressed support for the project.**

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Stephen D. Anderson  
ANDERSON & KREIGER LLP  
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Phone: 617-252-6575  
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Steve:

I have made some of the changes in the draft I gave Mark this morning but I like your changes as well.

Peter

[ [Back](#) ]

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ACHC - Willow/Central Project  
Recommendation from Ryan and Nancy  
3/8/06

**Recommendation:** ACHC prepare an RFP for a private or private non-profit developer to construct 2 affordable, 3-BR units. One unit on Willow St. and one on Central St. The development would include a shared septic system and a condominium ownership arrangement. The ACHC would provide the land free and clear and an additional subsidy not to exceed \$200,000.

**Recommended Steps**

1. Town Meeting votes to authorize the Selectmen to convey the Property to ACHC for purposes of re-conveyance to a developer who shall develop the affordable housing Project on the Property. Development will be subject to a Land Disposition Agreement.
2. Board of Selectmen vote to convey the Property to ACHC for the specific amount to be paid \$202,548.32
3. The ACHC shall prepare an RFP to seek proposals, subject to approval by the Selectmen and Town Counsel. The RFP will spell out the design options for the site and buildings.
4. The selected developer must agree to the house designs and the site plan detailed in the RFP, must redesign the septic system to a lower capacity of 6 bedrooms, must revise the architectural plans, and must do the engineering work necessary for Small Scale Comp Permit requirements.
5. The ACHC will agree to help the developer with the Comp Permit application and process, the lottery materials and affirmative action marketing plan, the regulatory agreements, the lottery, and the certification of the income eligibility of the winners.
6. The ACHC will re-convey the property, free and clear to the selected developer and provide the local subsidy not to exceed \$200,000.

**Notes:**

This proposal would allow any developer or non-profit organization to respond to the RFP which will be a simplified and understandable document. The developer who requires the least amount of subsidy would receive the most favorable consideration. The need and level of local subsidy would be negotiated with the developer.

Development Revenue		Priced		Priced		Priced		Priced
		at <80%		at <80% + <130%		<80% and market		Market
Number of Units		2		2		2		2
Number of Bedrooms		6		6		6		6
Number of Market Rate Units		0		0		0		3
Number of Affordable Units		2		2		2		0
3 Bedroom in Duplex 1320 sq ft		\$176,900		\$176,900		\$176,900		\$360,000
3 Bedroom in Bungalow 1526 sq ft		\$176,900		\$330,000		\$425,000		\$425,000
Revenue from Sales		\$353,800		\$506,900		\$601,900		\$785,000
Total Development Cost		\$865,885		\$865,885		\$865,885		\$865,885
Gap Financing / Funding Needed	0	-\$512,085		-\$358,985		-\$263,985		-\$80,885
Partial Town Funds								
CPA Funds	\$204,000	\$204,000		\$204,000		\$204,000		\$0
Non Town Funds								
New View Money								
Grant								\$0
Pulte Homes								
Total Development Revenue		\$557,800		\$710,900		\$805,900		\$785,000
Total Development Cost		\$865,885		\$865,885		\$865,885		\$865,885
Net of Revenue and Cost	\$0	-\$308,085		-\$154,985		-\$59,985		-\$80,885
Affordable Subsidy per Unit	\$102,000	\$256,042		\$179,492		\$263,985		\$0
Site Acquisition		\$202,548		\$202,548		\$202,548		\$202,548
clean up/back taxes/market value								
Site Work								
Site Work		\$25,000		\$25,000				\$25,000
Demolition		\$20,000		\$20,000				\$20,000
Landscaping		\$10,000		\$10,000				\$10,000
Sidewalk betterment		\$5,000		\$5,000				\$5,000
Water hook up		\$5,500		\$5,500				\$5,500
Driveways and walkways		\$10,000		\$10,000				\$10,000
Septic System		\$55,000		\$55,000				\$55,000
Sub Total		\$130,500		\$130,500				\$130,500
Site Work Cost Contingency	10%	\$13,050	10%	\$13,050	10%			\$13,050
Total Site Work Costs		\$143,550		\$143,550				\$143,550
Residential Construction Costs		\$284,800						\$284,800
Concrete		2848sq ft * \$100						2848sq ft * \$100
Gutters								
Carpentry								
Roofing								
Insulation								
Doors and Windows								
Interior Finishes								
Cabinets and Appliances								
Electrical								
Siding and Trim								
Painting								
Plaster								
Plumbing and HVAC								
Temp Power and Toilets								
Cleaning and Dumpsters								
Flooring								

Misc.								
Sub Total		\$284,800		\$284,800		\$284,800	\$284,800	
Construction Cost Contingency 10%	10%	\$28,480	10%	\$28,480	10%	\$28,480	\$28,480	
Total Construction Costs		\$313,280		\$313,280		\$313,280	\$313,280	
Site Soft Costs Estimate								
Permits/Approvals		\$4,000		\$4,000		\$4,000	\$4,000	
Architectural Plans		\$8,000		\$8,000		\$8,000	\$8,000	
Engineering Survey		\$15,000		\$15,000		\$15,000	\$15,000	
Legal		\$15,000		\$15,000		\$15,000	\$15,000	
Insurance		\$6,000		\$6,000		\$6,000	\$6,000	
Development Fee/Consultant								
Construction Supervisor				\$0		\$0		
Property Tax								
Construction Interest		\$20,000		\$20,000		\$20,000	\$20,000	
Accounting		\$10,000		\$10,000		\$10,000	\$1,600	
Marketing/Lottery Costs		\$8,000		\$8,000		\$8,000	\$31,400	
Overhead Profit		\$86,733	10%	\$86,733	10%	\$86,733	10%	\$86,733
Consultants		\$15,000		\$15,000		\$15,000	\$0	
Conditions Imposed by Town Boards				\$0		\$0		
Sub Total		\$187,733		\$187,733		\$187,733	\$187,733	
Soft Cost Contingency	10%	\$18,773	10%	\$18,773	10%	\$18,773	10%	\$18,773
Total Soft Cost		\$206,506		\$206,506		\$206,506	\$206,506	
Total Development Revenue		\$710,900		\$710,900		\$805,900	\$785,000	
Total Development Cost		\$865,885		\$865,885		\$722,335	\$865,885	
Net of Revenue and Cost	0	-\$154,985		-\$154,985		\$83,565	-\$80,885	

**TOWN OF ACTON**

**Building Department**

***INTERDEPARTMENTAL COMMUNICATION***

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**To:** John Murray, Assistant Town Manager    **Date:** March 6, 2006  
**From:** Garry A. Rhodes, Building Commissioner  
**Subject:** Map F-2B parcels 64, 65 and 76

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It was recently discovered that a portion (herein after referred to as triangle parcel) of what has been identified on the Town Atlas as Map F-2B parcel 65 had been conveyed to Map F-2B parcel 76 in 1912. The transfer was done by a deed identified as Book 3743 page 345. You requested, I review the above referenced parcels and determine the zoning implications of a possible transfer of the triangle parcel back to parcel 65. In my opinion it cannot be conveyed back to parcel 65 for the following reasons.

Parcels 64 and 65 are owned by the Town of Acton. Parcel 76 is owned by Flannery. All three parcels are zoned Village Residential. Village Residential has a minimum lot area requirement of 15,000 square feet and a minimum frontage of 50 feet. Parcels 64 and 65 without the triangle parcel have 15,335 square feet and 104.4 feet of frontage on Willow Street. Parcel 76 which includes the triangle parcel has approximately 8,848 square feet and 90 feet of frontage. Parcel 76 is therefore nonconforming. It is important to note the triangle parcel was conveyed prior to Acton adopting Zoning. To convey the triangle parcel to the Town of Acton will make parcel 76 more nonconforming then it is now which is not allowed by the Acton Zoning Bylaw.



**From:** Nancy Tavernier <ntavern@comcast.net>

**To:** Nancy Tavernier <ntavern@comcast.net>, Betty McManus <naomimcmanus@comcast.net >, Kevin McManus <kjmcmanus@comcast.net>, Dan Buckley <DJB01720@hotmail.com>, Bob Whittlesey <rbwhittlesey@verizon.net>, Ryan Bettez <bettezfamilly@yahoo.com>, Pam Shuttle <pam.shuttle@state.ma.us>, Bernice Baran <Bara437853@aol.com>

**Subject:** more background for tonight

**Date:** Wed, 8 Mar 2006 16:00:40 +0000

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This is a memo that Garry Rhodes sent to John Murray and states unequivocally that we cannot acquire the wedge of land from Flannery. It helps to focus on our course of action for tonight.

**To :** John Murray, Assistant Town Manager

**Date:** March 6, 2006

**From:** Garry A. Rhodes, Building Commissioner

**Subject:** Map F-2B parcels 64, 65 and 76

---

It was recently discovered that a portion (herein after referred to as triangle parcel) of what has been identified on the Town Atlas as Map F-2B parcel 65 had been conveyed to Map F-2B parcel 76 in 1912. The transfer was done by a deed identified as Book 3743 page 345. You requested, I review the above referenced parcels and determine the zoning implications of a possible transfer of the triangle parcel back to parcel 65. **In my opinion it cannot be conveyed back to parcel 65 for the following reasons.**

Parcels 64 and 65 are owned by the Town of Acton. Parcel 76 is owned by Flannery. All three parcels are zoned Village Residential. Village Residential has a minimum lot area requirement of 15,000 square feet and a minimum frontage of 50 feet. Parcels 64 and 65 without the triangle parcel have 15,335 square feet and 104.4 feet of frontage on Willow Street. Parcel 76 which includes the triangle parcel has approximately 8,848 square feet and 90 feet of frontage. Parcel 76 is therefore nonconforming. It is important to note the triangle parcel was conveyed prior to Acton adopting Zoning. **To convey the triangle parcel to the Town of Acton will make parcel 76 more nonconforming than it is now which is not allowed by the Acton Zoning Bylaw.**

[ [Back](#) ]

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**From:** Nancy Tavernier <ntavern@comcast.net>

**To:** pkashton@aol.com, Don Johnson <djohnson@acton-ma.gov>, Stephen D. Anderson <SAnderson@AndersonKreiger.com>

**Cc:** "ryan bettez" <bettezfamily@yahoo.com>, roland Bartl <rbartl@acton-ma.gov>, achc@acton-ma.gov

**Subject:** Willow/Central stop work

**Date:** Mon, 6 Mar 2006 15:01:21 +0000

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Dear Peter, Don and Steve,

Aside from the finalizing of the ANR plan that Engineering has been working on, it would be my suggestion that all work on the Willow/Central proposal cease until further notice. ACHC is meeting on 3/8 to consider a new direction. Once that direction is determined, we will meet with the neighborhood and other interested parties. We hope to be able to report to the Board of Selectmen on 3/13 at the earliest but certainly by 3/27 on a new recommended course of action. We recognize the urgency of putting this proposal before the Board before Town Meeting.

Thank you.

Nancy

[ [Back](#) ]

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TO: ACHC  
FROM: Nancy and Ryan  
SUBJECT: Willow/Central - a new and better plan  
DATE: March 6, 2006

Ryan and I have struggled with the latest in a series of events that seem to constantly get in the way of ACHC's proposal to develop affordable units on the town-owned parcel at Willow/Central. We are not quitting but rather we see this recommendation as a better and more feasible way to develop the property. We are presenting this recommendation to the ACHC for its consideration at the special ACHC meeting on 3/8/06. Should ACHC vote to approve this course of action, we will put all the necessary steps into motion immediately.

### **RECOMMENDATION:**

Town Meeting should proceed to authorize the Board of Selectmen to convey the parcel to ACHC, as originally planned. We then propose to issue an RFP designed to attract Habitat for Humanity as the only responder for a project on that site. ACHC would eventually convey the property to them subject to a number of contingencies. We would like to serve as advisors in some capacity to Habitat for the project. We believe there will be multiple winners with this proposal:

- ACHC will see that the project gets done and with a design we like
- Habitat will have a site to build on without having to fight the FinCom at Town Meeting
- Habitat and ACHC can work together now and in the future to gain greater community support for our missions
- The Town will still be reimbursed \$203,000 for the land acquisition (ACHC proposes to pay this)
- The Town will be rid of an unsafe eye-sore building and lot and will have the property back on the tax rolls
- The neighbors will get 2 attractive units with ongoing oversight by Habitat
- The neighbors' approval on the design will be sought
- Two units of affordable housing will be created less expensively due to the volunteer labor and community donations that are key to Habitat success

### **COURSE OF ACTION:**

1. ACHC reps meet with Habitat for Humanity before 3/8 to assess their interest
- ✱
- Agree to build 2, 3-BR units as single family homes, one on Willow, one on Central.
  - Agree to a design review process by ACHC and neighbors
  - Deed restriction must be in perpetuity
  - ACHC would seek an amendment to the LIP approval

2. ACHC reps meet with the neighbors on 3/10 to present the new plan for the site
  - We want to assure them the design of the 2 units would be subject to their input
  - ACHC would assist with Comp Permit or ZBA waiver to allow 2 lots to be created if 2 septic systems would work, if not a comp permit will be requested for a condo arrangement
3. Assuming buy-in from the above, ACHC must notify the Selectmen in time for their 3/13 or 3/27 meeting about the change in the proposal so that pertinent Town Meeting motions and presentations can be revised if required. Current warrant wording seems to be acceptable for this new plan in both the CPA and land transfer articles but Town Counsel is revising it further based on the general description I gave him of the new plan. (see below)
4. Acton Housing Authority needs to be notified about the change in proposal so they can seek another 3BR condo for purchase. All other town boards and departments need to be notified.
5. The DHCD/MassHousing people with the Priority Development Fund need to be informed about the new direction.
  - Need to find out if \$15,000 balance of grant could be used for a redesign on Habitat's behalf.
  - We hope we do not have to reimburse the PDF fund for design money spent
6. Contact Steve Steinberg to see if he would consider changing the purpose of his donation from the Willow/Central project to either a condo-buy down fund or for use with the Towne building project.
7. ACHC will prepare the RFP at the appropriate time. This may be delayed while engineering and architectural changes are made to the proposal. This step will have to be worked out with the Town.

## RISKS:

1. The neighbors will not approve of the plan or design.
  - They will have to understand that if not ACHC/Habitat then it will most likely go for a market sale
  - We are committed to a good design for the units.
2. The BOS and/or Town Meeting will not approve of the plan.
  - Given the level of community support for Habitat, this is unlikely and besides it prevents the River St. parcel from being developed, calming those opponents.
3. Habitat will not raise enough money to proceed and we are left holding the land.
  - This opportunity should give them the necessary momentum to move forward.
  - We will be providing the land free and clear. We can also facilitate the use of other housing gift funds. ?
  - They have a matching grant of \$30,000, if they can raise \$65,000 more. They need to raise \$200,000 for the construction cost of two units.

*info about us next year for BOS*

4. If all else fails, ACHC or the Town can put out an RFP for private development of one unit but limit the dimension of the building, number of bedrooms, and require a certain design, all to be consistent with the neighborhood.
5. If the risks look too great, ACHC can refuse to have the land conveyed to us in the first place.

## **TOWN MEETING WARRANT ARTICLE LANGUAGE FOR WILLOW-CENTRAL**

### **Wording in CPA Warrant Article #22:**

#### **B. Land Acquisition and Development – 28 Willow Street & 214 Central Street**

This recommended appropriation will provide funding to the Acton Community Housing Corporation (ACHC) for the acquisition of property located at 28 Willow and 214 Central Streets, and will help cover other costs that the ACHC may incur relative to the development of *up to three units* of community housing on said property. The Town of Acton is the current property owner. The property is shown on the 2004 Town Atlas plate F-2B as parcels 64 and 65. The total acquisition cost will be around \$202,500. The ACHC will pay \$42,500 from existing affordable housing gift funds. With State Priority Development Funding the ACHC has completed a feasibility study for a community housing project on the property and advanced preliminary plans in consultation with the surrounding residents. The ACHC has received site approval for the project from the Massachusetts Department of Housing and Community Development under the Local Initiative Program. An application for the project will be submitted to the Board of Appeals for a Comprehensive Permit under M.G.L. c. 40B.

### **Wording in Transfer Willow/Central Article #30:**

#### **ARTICLE 30 TRANSFER REAL PROPERTY – 28 WILLOW ST / 214 CENTRAL ST**

(Two-thirds vote)

To see if the Town will vote to transfer the real property at 28 Willow Street and 214 Central Street, Acton, MA, which was taken by the Town for nonpayment taxes in Land Court Case Nos. 112320 T.L. and 112319 T.L. (Judgments dated May 4, 1998), and which is held for municipal purposes as provided by Massachusetts General Law, Chapter 60, Section 77, from the tax title custodian to the Board of Selectmen for the purpose of conveyance, and to authorize the Board of Selectmen to convey such real property on such terms and conditions and for such consideration, which may include non-monetary consideration, as the Selectmen may determine, to the Acton Community Housing Corporation (“ACHC”), a non-profit housing corporation subject to the supervision of the Board of Selectmen pursuant to Chapter 143 of the Acts of 1996, for purposes of re-conveyance by ACHC, with the approval of the Board of Selectmen, *to a qualified developer of affordable housing, selected pursuant to a Request for Proposals (“RFP”), which RFP shall specify restrictions on the subsequent use of the property for*

- . *residential and affordable housing purposes*, or take any other action relative thereto.

## **SUMMARY**

This article authorizes the transfer of two abutting parcels, taken by the Town for taxes and remediated by the Town under the direction of a licensed site professional, to the Acton Community Housing Corporation for the development of *up to three units* of housing in two buildings to be newly constructed on the property. The conveyance from the Town to ACHC would be subject to the approval of the Selectmen, as would the authorization *for re-conveyance of the property by ACHC to a private developer pursuant to an RFP process. Reuse restrictions imposed in the RFP will require the developer to construct the housing in accordance with ACHC's requirements*, to restrict at least two of the units in perpetuity for affordable housing purposes, and to conform to the Board of Appeals's conditions imposed in a c. 40B permitting process. ACHC has reviewed the proposed building designs with neighbors, many of whom have expressed support for the project.

**Notice of Determination Under M.G.L. c. 40, § 15**

Pursuant to M.G.L. c. 40, §15, in my capacity as the Town Treasurer of the Town of Acton, being the custodian in charge of the tax title land owned by the Town of Acton located at 28 Willow Street and 214 Central Street, Acton, Massachusetts by tax title takings in Land Court Case Nos. 112320 T.L. and 112319 T.L. (Judgments dated May 4, 1998) (the "Property"), I hereby notify the Board of Selectmen of the Town of Acton that the Property is no longer required for public purposes and that the Property may be conveyed, subject to approval by Town Meeting, pursuant to G.L. c. 40, §§ 3 and 15. In authorizing the conveyance of the Property, the town meeting can specify the minimum amount to be paid for such conveyance pursuant to G.L. c. 40, §15. Accordingly, I have attached to this notification a summary of (a) the taxes, interest and penalties outstanding with respect to the Property, (b) the assessment, containment and removal costs incurred by the Town with respect to the environmental condition of the Property, (c) the mandatory amount of the payment in lieu of taxes that would be required from a buyer of the property, calculated in accordance with G.L. c. 44, § 63A, as of the date of this notice, and (d) the attorney's fees and costs related to the Town's investigation of environmental contamination at the Site and the lawsuit to collect those costs.

TOWN TREASURER

\_\_\_\_\_  
John Murray, III

DATE: \_\_\_\_\_



## **Willow-Central Warrant Article**

### **Article (Requires 2/3 vote)**

To see if the Town will vote to transfer the real property at 28 Willow Street and 214 Central Street, Acton, MA, which was taken by the Town for nonpayment taxes in Land Court Case Nos. 112320 T.L. and 112319 T.L. (Judgments dated May 4, 1998), and which is held for municipal purposes as provided by G.L. c. 60, § 77, from the tax title custodian to the Board of Selectmen for the purpose of conveyance, and to authorize the Board of Selectmen to convey such real property on such terms and conditions and for such consideration, which may include non-monetary consideration, as the Selectmen may determine, to the Acton Community Housing Corporation ("ACHC"), a non-profit housing corporation subject to the supervision of the Board of Selectmen pursuant to Chapter 143 of the Acts of 1996, for purposes of re-conveyance by ACHC, with the approval of the Board of Selectmen, to a qualified developer of affordable housing, selected pursuant to a Request for Proposals ("RFP"), which RFP shall specify restrictions on the subsequent use of the property for residential and affordable housing purposes,

or take any other action relative thereto.

### **MOTION**

**Mr. \_\_\_\_\_ moves that the Town authorize the transfer and conveyance of the real property as set forth in the Article.**

## **TOWN OF ACTON – BOARD OF SELECTMEN**

### **Motion to Authorize Acton Community Housing Corporation to Advance Affordable Housing Development on Certain Town-Owned Property**

WHEREAS the Town of Acton is the owner by tax taking of the real property at 28 Willow Street and 214 Central Street, Acton, Massachusetts (the “Property”) by tax title takings in Land Court Case Nos. 112320 T.L. and 112319 T.L. (Judgments dated May 4, 1998).

WHEREAS the Acton Community Housing Corporation (“ACHC”) proposes that the Property be developed as an affordable housing project consisting of three units of affordable housing (a duplex farmhouse on the Central Street side of the Property and a one-unit bungalow on the Willow Street side of the Property) (the “Project”).

WHEREAS the Board of Selectmen supports ACHC’s proposal for the Project.

WHEREAS ACHC is a non-profit housing corporation created by special Home Rule legislation and is subject to the supervision of the Board of Selectmen. See Chapter 143 of the Acts of 1996, § 1.

WHEREAS, under ACHC’s Home Rule legislation, ACHC has the power “with the approval of the board of selectmen, to acquire ..., and to own, ... and to ... sell, transfer, convey, ... or to otherwise dispose of, on such terms and conditions as it may deem proper, real ... property ... as may be necessary or appropriate to carry out its purposes.” (St. 1996, c. 143, § 2(d)).

WHEREAS the Board of Selectmen intends to place an article on the warrant for the next Town Meeting to authorize the Selectmen to convey the Property to ACHC on certain terms and conditions for purposes of re-conveyance, subject to applicable law, to a developer that will develop affordable housing on the Property.

NOW THEREFORE, the Board of Selectmen moves to authorize the following actions in furtherance of the Project on the Property:

1. ACHC is hereby authorized to apply to the Department of Housing and Community Development (“DHCD”) for any necessary approval and site eligibility determination under the Local Initiative Program, 760 CMR 45.00, for the Project.
2. ACHC is hereby authorized to apply to the Acton Board of Appeals for a Comprehensive Permit under M.G.L. c. 40B for the Project.
3. ACHC is hereby authorized to apply to other State and Town boards, commissions, departments, and agencies for any other necessary permits and approvals for the Project, exclusive of any building permits and other

construction-related permits needed for the actual construction of the Project (it being understood that the Selectmen and ACHC intend, subject to Town Meeting approval, that the permitted Project and Property will be conveyed pursuant to applicable law and re-use restrictions to a qualified developer who will own the Property, construct the Project, and dispose of the units as appropriate).

4. Prior to submission, each such application shall be provided to Town Counsel, the Town Manager, and the Board of Selectmen for their respective review and approval, and for execution as may be necessary on behalf of the Town.
5. Town Counsel, in consultation with the Town Manager, is hereby authorized and directed to prepare any necessary Affordable Housing Restrictions, Land Dispositions Agreements, Request for Proposals, and other transaction documents necessary to effectuate the Project.
6. The Town Manager is hereby authorized to determine the value of the Property subject to the terms and conditions of the Comprehensive Permit and the affordable housing restrictions to be imposed on the Property. Said determination shall be made under G.L. c. 30B, § 16(b), through procedures customarily accepted by the appraising profession as valid, including in the judgment of the Town Manager a real estate appraisal from a qualified real estate expert familiar with property values in the Town of Acton.
7. In the event the value of the Property as so determined exceeds twenty-five thousand dollars in value, ACHC is hereby authorized to issue a Request for Proposals ("RFP") in accordance with documents to be prepared by Town Counsel and approved by the Town Manager and the Board of Selectmen for the prospective conveyance of the Property conditioned upon the construction and implementation of the Project. Without limitation, the RFP shall condition such disposition of the Property on the approval of Town Meeting and the further approval of the Board of Selectmen under St. 1996, c. 143, § 2(d) and/or other applicable law.
8. Town Counsel, in consultation with the Town Manager, is hereby authorized and directed to prepare any necessary warrant articles for the next Town Meeting to authorize the Selectmen to convey the Property to ACHC for purposes of re-conveyance to a developer who shall develop the affordable housing Project on the Property, subject to applicable law, subject to terms and conditions established by the Selectmen, and subject to the terms and conditions of the Comprehensive Permit and the affordable housing restrictions to be imposed on the Property for the Project.
9. For purposes of G.L. c. 40, § 15, the proposed warrant article authorizing the Board of Selectmen to convey the Property to ACHC shall specify the amount to be paid by ACHC for such conveyance as **\$202,548.32**, which when paid

shall be applied, in the following order, to (a) the taxes, interest and penalties outstanding with respect to the Property, (b) the required amount of the payment in lieu of taxes that would be required from a buyer of the property, calculated in accordance with G.L. c. 44, § 63A, as of the date of the conveyance, (c) the assessment, containment and removal costs incurred by the Town with respect to the environmental condition of the Property, and (d) the attorney's fees and costs related to the Town's investigation of environmental contamination at the Property and the lawsuit to collect those costs.

IN WITNESS WHEREOF, the Board has caused the foregoing to be moved, seconded, and approved at an open meeting duly called and noticed for the purpose on this 18<sup>th</sup> day of July, 2005.

TOWN OF ACTON, MASSACHUSETTS,  
By its Board of Selectmen

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Peter K. Ashton, Chairman

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Walter M. Foster, Vice Chairman

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Lauren Rosenzweig

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F. Dore' Hunter, Acting Clerk

7/18/05

Final VersionTOWN OF ACTON – BOARD OF SELECTMENMotion to Authorize Acton Community Housing Corporation to Advance  
Affordable Housing Development on Certain Town-Owned Property

WHEREAS the Town of Acton is the owner by tax taking of the real property at 28 Willow Street and 214 Central Street, Acton, Massachusetts (the “Property”) by tax title takings in Land Court Case Nos. 112320 T.L. and 112319 T.L. (Judgments dated May 4, 1998).

WHEREAS the Acton Community Housing Corporation (“ACHC”) proposes that the Property be developed as an affordable housing project consisting of three units of affordable housing (a duplex farmhouse on the Central Street side of the Property and a one-unit bungalow on the Willow Street side of the Property) (the “Project”).

WHEREAS the Board of Selectmen supports ACHC’s proposal for the Project.

WHEREAS ACHC is a non-profit housing corporation created by special Home Rule legislation and is subject to the supervision of the Board of Selectmen. See Chapter 143 of the Acts of 1996, § 1.

WHEREAS, under ACHC’s Home Rule legislation, ACHC has the power “with the approval of the board of selectmen, to acquire ..., and to own, ... and to ... sell, transfer, convey, ...or to otherwise dispose of, on such terms and conditions as it may deem proper, real ... property ... as may be necessary or appropriate to carry out its purposes.” (St. 1996, c. 143, § 2(d)).

WHEREAS the Board of Selectmen intends to place an article on the warrant for the next Town Meeting to authorize the Selectmen to convey the Property to ACHC on certain terms and conditions for purposes of re-conveyance, subject to applicable law, to a developer that will develop affordable housing on the Property.

NOW THEREFORE, the Board of Selectmen moves to authorize the following actions in furtherance of the Project on the Property:

1. ACHC is hereby authorized to apply to the Department of Housing and Community Development (“DHCD”) for any necessary approval and site eligibility determination under the Local Initiative Program, 760 CMR 45.00, for the Project.
2. ACHC is hereby authorized to apply to the Acton Board of Appeals for a Comprehensive Permit under M.G.L. c. 40B for the Project.

3. ACHC is hereby authorized to apply to other State and Town boards, commissions, departments, and agencies for any other necessary permits and approvals for the Project, exclusive of any building permits and other construction-related permits needed for the actual construction of the Project (it being understood that the Selectmen and ACHC intend, subject to Town Meeting approval, that the permitted Project and Property will be conveyed pursuant to applicable law and re-use restrictions to a qualified developer who will own the Property, construct the Project, and dispose of the units as appropriate).
4. Prior to submission, each such application shall be provided to Town Counsel, the Town Manager, and the Board of Selectmen for their respective review and approval, and for execution as may be necessary on behalf of the Town.
5. Town Counsel, in consultation with the Town Manager, is hereby authorized and directed to prepare any necessary Affordable Housing Restrictions, Land Dispositions Agreements, Request for Proposals, and other transaction documents necessary to effectuate the Project.
6. The Town Manager is hereby authorized to determine the value of the Property subject to the terms and conditions of the Comprehensive Permit and the affordable housing restrictions to be imposed on the Property. Said determination shall be made under G.L. c. 30B, § 16(b), through procedures customarily accepted by the appraising profession as valid, including in the judgment of the Town Manager a real estate appraisal from a qualified real estate expert familiar with property values in the Town of Acton.
7. In the event the value of the Property as so determined exceeds twenty-five thousand dollars in value, ACHC is hereby authorized to issue a Request for Proposals ("RFP") in accordance with documents to be prepared by Town Counsel and approved by the Town Manager and the Board of Selectmen for the prospective conveyance of the Property conditioned upon the construction and implementation of the Project. Without limitation, the RFP shall condition such disposition of the Property on the approval of Town Meeting and the further approval of the Board of Selectmen under St. 1996, c. 143, § 2(d) and/or other applicable law.
8. Town Counsel, in consultation with the Town Manager, is hereby authorized and directed to prepare any necessary warrant articles for the next Town Meeting to authorize the Selectmen to convey the Property to ACHC for purposes of re-conveyance to a developer who shall develop the affordable housing Project on the Property, subject to applicable law, subject to terms and conditions established by the Selectmen, and subject to the terms and conditions of the Comprehensive Permit and the affordable housing restrictions to be imposed on the Property for the Project.

9. For purposes of G.L. c. 40, § 15, the proposed warrant article authorizing the Board of Selectmen to convey the Property to ACHC shall specify the amount to be paid by ACHC for such conveyance as **\$202,548**, which when paid shall be applied, in the following order, to (a) the taxes, interest and penalties outstanding with respect to the Property, (b) the required amount of the payment in lieu of taxes that would be required from a buyer of the property, calculated in accordance with G.L. c. 44, § 63A, as of the date of the conveyance, (c) the assessment, containment and removal costs incurred by the Town with respect to the environmental condition of the Property, and (d) the attorney's fees and costs related to the Town's investigation of environmental contamination at the Property and the lawsuit to collect those costs.

IN WITNESS WHEREOF, the Board has caused the foregoing to be moved, seconded, and approved at an open meeting duly called and noticed for the purpose on this 18<sup>th</sup> day of July, 2005.

TOWN OF ACTON, MASSACHUSETTS,  
By its Board of Selectmen

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Peter K. Ashton, Chairman

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Walter M. Foster, Vice Chairman

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Lauren Rosenzweig

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F. Dore' Hunter, Acting Clerk

**John Murray**

**From:** Stephen Anderson  
**Sent:** Sunday, July 17, 2005 2:06 PM  
**To:** John Murray  
**Cc:** Daniel C. Hill  
**Subject:** RE: Acton/ACHC: Disposition of Town-Owned Tax Title Land at 28 Willow Street and 214 Central Street

Hi John:

I am operating on the assumption that the conveyance of the property by the selectmen, duly authorized, to ACHC is exempt from the RFP provisions of the Uniform Procurement Act by virtue of c. 30B, s. 1(b)(7) (exempting "an agreement between agencies, boards, commissions, authorities, departments or public instrumentalities of one city or town") and/or c. 30B, s. 16(i) ("Acquisitions or dispositions of real property or any interest therein pursuant to this section between governmental bodies and the federal government, the commonwealth or any of its political subdivisions or another state or political subdivision thereof shall be subject to subsections (a), (b) and (g)"). This of course assumes that ACHC is, for this purpose, an agency, commission, or public instrumentality of the Town and/or a political subdivision (see my previous memo analyzing the ACHC legislation and its hybrid status). Since ACHC operates under the supervision of the Selectmen (see Chapter 143 of the Acts of 1996, § 1) and since the approval of the Board of Selectmen is required for ACHC to acquire, own, hold, and dispose of real property (see c. 143, § 2(d)), I'm comfortable with this assumption at this time. By copy of this email, I am asking for Dan to check for any analagous situations where courts have held the RFP requirements of the UPA not to apply to a conveyance from a Town to an entity such as ACHC.

When ACHC disposes of the property to a developer, the RFP requirements of Section 16 may or may not apply. That depends on whether the value of the Property "determined in accordance with paragraph (b) ... exceed[s] twenty-five thousand dollars in value." That's why the Motion includes items 6 and 7. Dan has assisted other towns in disposing of property restricted for affordable housing where the restrictions reduced the value below \$25,000 and the RFP requirements did not apply. That's why I phrased the Motion the way I did.

As for whether the Town and the ACHC be joint petitioners to the State and Board of Appeals, I want to review the draft applications with that question in mind. At a minimum the Town will sign as the Owner of the Property. Possibly, the applications will be joint. I will know better when I see the drafts.

Steve

-----Original Message-----

From: John Murray [mailto:jmurray@acton-ma.gov]  
Sent: Sunday, July 17, 2005 12:57 PM  
To: Stephen D. Anderson  
Subject: RE: Acton/ACHC: Disposition of Town-Owned Tax Title Land at 28 Willow Street and 214 Central Street

Steve,

If I understand the meaning of footnote 7 of the Disposition document -- ACHC obtains the parcels in question by answering a RFP from the Town.  
Is that correct because the motion appears to be a direct conveyance to ACHC. Also should the Town and the ACHC be joint petitioners to the State and Board of Appeals?

John

-----Original Message-----

From: Stephen Anderson  
Sent: Saturday, July 16, 2005 10:03 PM  
To: Don Johnson; John Murray  
Cc: Nancy Tavernier; Daniel C. Hill  
Subject: Acton/ACHC: Disposition of Town-Owned Tax Title Land at 28 Willow Street and 214 Central Street

<<Disposition-Tax-Title -Property.doc>> <<ExhibitA-Determination.DOC>>  
<<ExhibitB-Motion.DOC>> <<Acton/ACHC: Tax Title Land at 28 Willow Street and 214 Central Street>>

Dear Don, John and Nancy:

I have reviewed ACHC's proposal to the Board of Selectmen for the disposition of the Town-owned Tax Title land at 28 Willow Street and 214 Central Street. In light of a new SJC case just decided on June 29, 2005, entitled Board of Selectmen of Hanson v. Lindsay, 444 Mass. 502 (2005), I've recommended a slightly different procedure for advancing ACHC's proposed project from that set out in Nancy's memo to the Board. If the Board of Selectmen supports the proposed project as presented, I recommend that John sign the Notification attached as Exhibit A and that the Board of Selectmen adopt the Motion attached as Exhibit B. This will enable the project to advance significantly pending the required Town Meeting vote(s) at the next Annual or Special Town Meeting.

Please see my email of earlier today regarding the attachment John needs to develop for Exhibit A.

Please fill in the blank on paragraph 9 of Exhibit B before the Selectmen meet to discuss this.

---

Stephen D. Anderson  
ANDERSON & KREIGER LLP  
43 Thorndike Street  
Cambridge MA 02141-1764  
Phone: 617-252-6575  
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Extra Info

7/18/05

#6

Counsel's Reply  
in full, except for motion

John Murray

**From:** Stephen Anderson  
**Sent:** Saturday, July 16, 2005 10:03 PM  
**To:** Don Johnson; John Murray  
**Cc:** Nancy Tavernier; Daniel C. Hill  
**Subject:** Acton/ACHC: Disposition of Town-Owned Tax Title Land at 28 Willow Street and 214 Central Street



Disposition-Tax-Title Exhibit A-Determination of Property  
e-Property... ion.DOC (23... C (38 KB) Title Land at...

<<Disposition-Tax-Title -Property.doc>>

<<Exhibit A-Determination.DOC>> <<Exhibit B-Motion.DOC>> <<Acton/ACHC: Tax Title Land at 28 Willow Street and 214 Central Street>>

Dear Don, John and Nancy:

I have reviewed ACHC's proposal to the Board of Selectmen for the disposition of the Town-owned Tax Title land at 28 Willow Street and 214 Central Street. In light of a new SJC case just decided on June 29, 2005, entitled Board of Selectmen of Hanson v. Lindsay, 444 Mass. 502 (2005), I've recommended a slightly different procedure for advancing ACHC's proposed project from that set out in Nancy's memo to the Board. If the Board of Selectmen supports the proposed project as presented, I recommend that John sign the Notification attached as Exhibit A and that the Board of Selectmen adopt the Motion attached as Exhibit B. This will enable the project to advance significantly pending the required Town Meeting vote(s) at the next Annual or Special Town Meeting.

Please see my email of earlier today regarding the attachment John needs to develop for Exhibit A.

Please fill in the blank on paragraph 9 of Exhibit B before the Selectmen meet to discuss this.

Stephen D. Anderson  
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## MEMORANDUM

TO: Don P. Johnson, Town Manager

FROM: Stephen D. Anderson, Town Counsel

RE: Acton/ACHC: Proposed Development of Affordable Housing on Town-Owned Tax Title Land at 28 Willow Street and 214 Central Street

DATE: July 16, 2005

---

The Town is the owner by tax taking of the real property at 28 Willow Street and 214 Central Street, Acton, Massachusetts (the "Site") by tax title takings in Land Court Case Nos. 112320 T.L. and 112319 T.L. (Judgments dated May 4, 1998). After the Town addressed environmental problems associated with the Site, the Acton Community Housing Corporation ("ACHC")<sup>1</sup> has developed a proposal to reuse the Site for a new affordable housing project. ACHC has asked the Board of Selectmen to vote to grant control of the Site to ACHC, contingent on ACHC putting the development out to bid and transferring Site ownership to the selected developer after ACHC has obtained necessary permits for the development.

As custodian of the Town's tax title properties, the Town Treasurer has inquired as to the appropriate procedure for disposition of this tax title property. This memorandum addresses that procedure and recommends an appropriate course of action so that the proposed project can continue to proceed forward at this time.

### Options for Disposing of Tax Title Property

In a new case just decided on June 29, 2005, entitled *Board of Selectmen of Hanson v. Lindsay*, 444 Mass. 502 (2005), the SJC described the three methods for disposing of tax title property (emphasis added):

Pursuant to G. L. c. 60, § 77B, "the selectmen of any town which holds property acquired by foreclosure of tax titles or acquired under [G. L. c. 60, § 80,]<sup>2</sup> may

---

<sup>1</sup> ACHC is "a non-profit housing corporation ... subject to the supervision of the board of selectmen of the Town of Acton." (See Chapter 143 of the Acts of 1996, § 1).

<sup>2</sup> Section 80 provides that,

If no person bids at such a sale [under Chapter 60, Section 79 regarding a sale at tax auction without foreclosure] or if no bid deemed adequate by the treasurer is made thereat and if the sale has been adjourned one or more times, the treasurer shall then and there make public declaration of the fact, and if no bid or no bid deemed adequate as aforesaid is then made he shall give public notice that he purchases for the town by which the tax is assessed; or if the person to whom the land is sold does not within ten days pay to the treasurer the sum bid by him the sale shall be void and the town shall be deemed to be the purchaser of the land. If the town becomes the purchaser hereunder, the treasurer shall execute to it a deed which shall set forth the fact that no bid or no bid deemed adequate as aforesaid was made at the sale or that the purchaser failed to pay the amount bid, as the

appoint a custodian who shall have the care, custody, management and control of all property heretofore or hereafter so acquired by said . . . town. . . . The custodian, acting on behalf of the . . . town, may, notwithstanding any provision of law, ordinance or by-law inconsistent herewith, **sell at public auction** any such property" after providing proper notice of the sale. . . . General Laws c. 60, § 77B, further states that "[t]his section shall not be construed to prevent a . . . town from **disposing of such property under [G. L. c. 40, § 3], or in any other manner authorized by law.**"

The three methods are thus:

- (1) the tax auction process,
- (2) the c. 40, § 3, process, and
- (3) any other manner authorized by law.

Whichever way the Town chooses to go, several miscellaneous requirements apply to a sale of tax title property, the most significant of which from a monetary standpoint is that the Town must receive a payment in lieu of taxes from the buyer, calculated in accordance with G.L. c. 44, § 63A.<sup>3</sup>

#### The Tax Auction Process:

The tax auction process does not readily lend itself to ACHC's goal of and methodology for developing affordable housing on the town-owned tax title land at 28 Willow Street and 214 Central Street. Accordingly, the auction option will not be considered further in this memorandum.

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case may be. Such deed shall not be valid unless recorded within sixty days after the sale under this section; and the title of the town to land conveyed thereby shall be absolute upon the recording of said deed in the proper registry of deeds within such sixty days.

<sup>3</sup>

Other requirements are, for example:

- The buyer must provide the Town a signed statement that the buyer has not been convicted of arson and is not delinquent in the payment of real estate taxes in the town in which the property is being sold. G.L. c. 60, § 77B.
- The Town must also obtain a disclosure of beneficial interest statement from the buyer as required under G.L. c. 7, § 40J.
- The sale is not exempt from the Title 5 inspection requirements of 310 CMR 15.301(f), as applicable.

### Other Manner Authorized by Law

Special Home Rule legislation or other procedures authorized by law could provide a specific method for the disposition of tax title property. In the absence of such law or legislation, however, this option will not be considered further in this memorandum.<sup>4</sup>

### The c. 40, § 3 Process

In the *Hanson* case, the SJC described the land disposition process under c. 40, § 3, as follows (emphasis added; other emphasis deleted):

Pursuant to G. L. c. 40, § 3, "[a] town may hold real estate for the public use of the inhabitants and **may convey the same by a deed of its selectmen thereto duly authorized, or by a deed of a committee or agent thereto duly authorized . . .** and may make such orders as it may deem necessary or expedient for the disposal or use of its corporate property" (emphasis added). General Laws c. 40, § 3, further provides that "[a]ll real estate . . . of the town, not by law or by vote of the town placed in the charge of any particular board, officer or department, shall be under the control of the selectmen, except as is otherwise provided in this section or [G. L. c. 40, § 9, pertaining to building space for veterans' organizations and armories]."

The reference in Section 3 to "duly authorized" means that the Board of Selectmen, the committee or the agent must have received the requisite vote of Town Meeting to dispose of the property in question (*id.*, emphasis added):

**It is the inhabitants of a town, acting at a town meeting, who have the power to encumber and dispose of real estate,** with certain limited exceptions, pertaining to leases, that are not material in this case.

In general, Town Meeting exercises its powers over the disposition of Town-owned property by following the procedures of G.L. c. 40, § 15A (requiring a two-thirds vote to transfer property held for a specific purpose)<sup>5</sup> and G.L. c. 40, § 15 (requiring a two-thirds

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<sup>4</sup> Special legislation established ACHC. See Chapter 143 of the Acts of 1996. ACHC can acquire and dispose of real property (c. 143, § 2, referencing G.L. c. 156B, § 9(e and f)), particularly with the approval of the Board of Selectmen (c. 143, § 2(d)). Thus, ACHC has the power "with the approval of the board of selectmen, to acquire or lease, by purchase or otherwise, and to own, hold and use on such terms and conditions and in such a manner as it may deem property and to exchange, grant options on, sell, transfer, convey, assign, lease, pledge, mortgage, encumber, grant liens on and security interests in or to otherwise dispose of, on such terms and conditions as it may deem proper, real, personal or mixed real and personal property or any interest, easement or rights therein and any assets or revenues of the board of directors, as may be necessary or appropriate to carry out its purposes." (c. 143, § 2(d)). However, nothing in c. 143 expressly authorizes the Selectmen to transfer tax title property to ACHC without first going through the procedures applicable to such tax title property. See below.

<sup>5</sup> Section 15A provides that:

vote to dispose of property).<sup>6</sup> Since the Site was not acquired in the first instance for a specific purpose and has not since been dedicated to a specific purpose, the procedures of G.L. c. 40, § 15, not § 15A, apply to its disposition:

1. First, the “officer of a ... town having charge of any land ... taken for such ... town, otherwise than by purchase, [must notify] the ... the selectmen that, in his opinion, such land, ... is no longer required for public purposes ....” In this case, the officer having custody of the land is the Town Treasurer as the custodian of tax title property. Attached as **Exhibit A** is a simple form of notification which could be used in the present case.
2. Second, the “town by a two thirds vote [must] authorize the conveyance of such land, ... and specify the minimum amount to be paid for such conveyance ...” Under Article 11 of the 2005 ATM Warrant, the Town voted “to authorize the Board of Selectmen to dispose of foreclosed properties acquired by the Town for nonpayment of taxes in accordance with the provisions of Massachusetts General Laws, or take any other

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Whenever a board or officer having charge of land, including land acquired for playground purposes pursuant to the provisions of section fourteen of chapter forty-five, but excluding land acquired for park purposes, constituting the whole or any part of an estate held by a city or town within its limits for a specific purpose shall determine that such land is no longer needed for such purpose, whether such land was acquired before or after the effective date of this section and whether acquired by eminent domain, purchase, gift, devise or otherwise, such board or officer shall forthwith give notice of such determination to the city council of the city or the board of selectmen of the town. At any time after the receipt of such notice, the city council of the city by a two thirds vote of all its members, in the case of a city having a city manager, with the approval of said city manager, and in the case of other cities, with the approval of the mayor, or the town by a two thirds vote at a regular or special town meeting, may transfer the care, custody, management and control of such land to the same or another board or officer of the city or town for another specific municipal purpose, any provision of general or special law to the contrary notwithstanding; provided, that no such transfer shall be valid if it is in violation of any term or condition of the title of the city or town to such land.

In any city or town which accepts the provisions of this paragraph, when land is being transferred for the purpose of constructing low and moderate income housing, the vote required of the city council or the town meeting shall be by a majority vote.

<sup>6</sup> Section 15 provides that,

If any officer of a city or town having charge of any land, easement or right taken for such city or town, otherwise than by purchase, notifies the city council or the selectmen that, in his opinion, such land, easement or right, or part thereof, is no longer required for public purposes, and if thereafter the city council or the inhabitants of the town by a two thirds vote authorize the conveyance of such land, or of part thereof, or the abandonment of such easement or right, or part thereof, and specify the minimum amount to be paid for such conveyance or abandonment, the mayor or the selectmen may, for such amount or a larger amount, and upon such other terms as the mayor or selectmen shall consider proper, convey said land, or part thereof, by deed, or declare said easement or right, or part thereof, to be abandoned. Such declaration, being recorded in the registry of deeds for the district where the land is situated, shall extinguish the easement or right, or part thereof.

action relative thereto.” It is unlikely however that a lender financing an affordable housing development on the property in question would be satisfied with this vote alone. Instead, the Town Meeting should be asked to vote a specific authorization to dispose of the property in question and the vote should specify “the minimum amount to be paid for such conveyance.”

3. Thereafter, “upon such other terms as the ... selectmen shall consider proper,” the Town may convey said land... by deed.”<sup>7</sup>

### **Advancement of the Proposed Project Pending Town Meeting Approval**

In the absence of the necessary Town Meeting vote, the Selectmen are not in a position to convey or transfer the property in question to ACHC at the Board meeting on July 18, 2005. However, that does not mean that ACHC’s proposed project must grind to a halt pending Town Meeting approval.

Rather, assuming the Town Treasurer makes the finding set forth in Exhibit A, the Selectmen can authorize ACHC and Town Counsel to undertake a variety of specific activities in furtherance of the proposed project. A suggested Motion to accomplish this is attached as **Exhibit B**.

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<sup>7</sup> The Uniform Procurement Act, G.L. c. 30B, § 16, does not apply to the disposition of tax title land through the public tax auction process, but it does apply to a disposition of tax title property under G.L. c. 40, §§ 3 and 15.

## **EXHIBIT A**

### **Notice of Determination Under M.G.L. c. 40, § 15**

Pursuant to M.G.L. c. 40, §15, in my capacity as the Town Treasurer of the Town of Acton, being the custodian in charge of the tax title land owned by the Town of Acton located at 28 Willow Street and 214 Central Street, Acton, Massachusetts by tax title takings in Land Court Case Nos. 112320 T.L. and 112319 T.L. (Judgments dated May 4, 1998) (the "Property"), I hereby notify the Board of Selectmen of the Town of Acton that the Property is no longer required for public purposes and that the Property may be conveyed, subject to approval by Town Meeting, pursuant to G.L. c. 40, §§ 3 and 15. In authorizing the conveyance of the Property, the town meeting can specify the minimum amount to be paid for such conveyance pursuant to G.L. c. 40, §15. Accordingly, I have attached to this notification a summary of (a) the taxes, interest and penalties outstanding with respect to the Property, (b) the assessment, containment and removal costs incurred by the Town with respect to the environmental condition of the Property, (c) the mandatory amount of the payment in lieu of taxes that would be required from a buyer of the property, calculated in accordance with G.L. c. 44, § 63A, as of the date of this notice, and (d) the attorney's fees and costs related to the Town's investigation of environmental contamination at the Site and the lawsuit to collect those costs.

TOWN TREASURER

---

John Murray, III

DATE: \_\_\_\_\_

**Notice of Determination Under M.G.L. c. 40, § 15**

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TOWN TREASURER

\_\_\_\_\_  
John Murray, III

DATE: \_\_\_\_\_

Extra Info 7/18/05

Nancy's Reaction

John Murray

#6

**From:** Nancy Tavernier  
**Sent:** Sunday, July 17, 2005 8:06 AM  
**To:** Stephen Anderson  
**Cc:** Don Johnson; John Murray; Daniel C. Hill  
**Subject:** Re: Acton/ACHC: Disposition of Town-Owned Tax Title Land at 28 Willow Street and 214 Central Street

Dear Steve,

Thank you so much for your thorough review and clear ruling on the land disposition question. Affordable housing is always a roller coaster ride and this series of attachments was no exception. Halfway through the ruling, I was in tears of utter frustration, but you saved the best for last - The Motion! I am extremely gratified that you have seen the value of our proposal. I am confident the BOS will also. The timing you lay out is very realistic and, the fact of the matter is, an April Town Meeting vote would mesh nicely with our next CPA housing fund request to apply to this project, in addition to the \$150,000 we are holding.

So onward and upward and downward and upward and.....around the final curve to the end.

Nancy

At 10:02 PM 7/16/2005, Stephen D. Anderson wrote:

> <<Disposition-Tax-Title  
> -Property.doc>> <<ExhibitA-Determination.DOC>>  
> <<ExhibitB-Motion.DOC>>  
> <<Acton/ACHC: Tax Title Land at 28 Willow Street and 214 Central  
> Street>>  
>

>Dear Don, John and Nancy:

>  
> I have reviewed ACHC's proposal to the Board of Selectmen for  
> the disposition of the Town-owned Tax Title land at 28 Willow Street  
> and 214 Central Street. In light of a new SJC case just decided on  
> June 29, 2005, entitled Board of Selectmen of Hanson v. Lindsay, 444  
> Mass. 502 (2005), I've recommended a slightly different procedure for  
> advancing ACHC's proposed project from that set out in Nancy's memo to  
> the Board. If the Board of Selectmen supports the proposed project as  
> presented, I recommend that John sign the Notification attached as  
> Exhibit A and that the Board of Selectmen adopt the Motion attached as  
> Exhibit B. This will enable the project to advance significantly  
> pending the required Town Meeting vote(s) at the next Annual or Special Town Meeting.  
>

> Please see my email of earlier today regarding the attachment  
> John needs to develop for Exhibit A.  
>

> Please fill in the blank on paragraph 9 of Exhibit B before  
> the Selectmen meet to discuss this.  
>

>  
>\_\_\_\_\_  
>Stephen D. Anderson  
>ANDERSON & KREIGER LLP  
>43 Thorndike Street  
>Cambridge MA 02141-1764  
>Phone: 617-252-6575  
>Fax: 617-252-6899  
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Extra Info T/18/05  
#6

Amount Due for 28 Willow and 214 Central St

<u>Category</u>	<u>Amount</u>	<u>Comment</u>
Taxes and Penalties	\$ 112,707.81	Thru April 30, 2006, No additional taxes since foreclosure
Legal Expenses	\$ 17,084.67	Thru July 18, 2005
HazMat Clean-up Cost	\$ 65,096.00	Thru July 18, 2005
Pilot per MGL C. 44 S 63A	\$ 7,659.84	Assumed Conveyed on April 30, 2006
Total	\$ 202,548.32	

## Tax Possessions

The mayor in cities and the selectmen in towns may appoint a custodian to manage property acquired through the foreclosure of tax titles. (60:77B) The treasurer is often appointed as the custodian, especially in smaller towns.

The custodian has authority to sell tax possession property at public auction. However, at least 14 days before a tax possession sale, the municipality must notify, by certified mail, the person who was the owner of record of the property prior to its acquisition by the community. The municipality must also post notice in two or more, public places at least 14 days prior to the sale. The notice must include a description of the property; the date, time and place of sale; and the terms and conditions of that sale. (60:77B)

The custodian may reject any and all bids at such sale if, in his or her opinion, none of the bids represent the market value of the property. The custodian may also adjourn the sale. Upon the consummation of a sale, the treasurer must execute and deliver all instruments necessary to transfer title after payment has been made.

### Pro Rata/Pro Forma Taxes

If property belonging to a municipality is sold, the board or officer executing the deed must receive a pro-rated payment in lieu of taxes before the deed can be delivered. (44:63A) The payment is calculated by multiplying the tax rate for the fiscal year of the sale by the sale price. For example, if a property were to sell for \$100,000.00 on December 15<sup>th</sup> and the tax rate were \$25.00, the in lieu of tax payment would be calculated as follows:

$$\text{Sale Price} \times \text{Tax Rate} \times \text{Days Remaining in FY} \div \text{Days in FY} = \text{Tax Due}$$

$$\$100,000.00 \times .025 \times 197 \div 365 = \$1,349.32$$

If the property is sold between January 2<sup>nd</sup> and June 30<sup>th</sup>, the municipality should receive an additional payment in lieu of taxes for the next succeeding fiscal year. This pro-forma tax is calculated by multiplying the sales price by the tax rate. The pro-rata/pro-forma taxes must be received before delivery of the deed. The deed should recite compliance with Ch. 44 §63A.

Extra Info 7/18/05

# 6

RE: moving forward tonight  
without exhibit A being completed**John Murray**

**From:** Stephen Anderson  
**Sent:** Sunday, July 17, 2005 1:42 PM  
**To:** John Murray; Board of Selectmen  
**Cc:** Don Johnson; Daniel C. Hill; Nancy Tavernier  
**Subject:** RE: Tax Taking Land at Willow and Central

John:

The timing of your determination is not material. See *Harris v. Wayland*, 392 Mass. 237, 241, 466 N.E.2d 822 (1984) ("The fact that the school committee did not make its formal determination that it no longer needed the land before the town voted to authorize the sale has no practical significance. Formal determination can come after the vote as well as before, *Bouchard v. Haverhill*, 342 Mass. 1, 4, 171 N.E.2d 848 (1961), and in this case the school committee had indicated that it would release the land if the town authorized the sale."). If the Selectmen are so inclined, they can proceed with the Motion on Monday night while you pursue your due diligence as to whether the Property is required for other public purposes. As you correctly point out, in this circumstance, the second "Whereas" should be deleted from the Motion. I have attached a redraft of the Motion with this edit.

As to the level of due diligence needed, the SJC in *Board of Selectmen of Hanson v. Lindsay*, 444 Mass. 502 (2005), described the process followed by the tax custodian in that case before for disposing of the tax title property at auction:

The locus remained on the town's list of tax possessions. In 1998, the town's tax custodian circulated to the departments within town hall, including the commission, a list of the properties that she planned to auction, including the locus. The tax custodian, who had no knowledge of the 1971 vote, did not receive information from any department that the locus had been designated as conservation land and was to be retained for such use.

Your inquiry to Town department heads as to whether there is an alternate public purpose for these parcels is consistent with this approach.

PS: To enable the Selectmen fill in the blank in the attached Motion with an appropriate amount, you will still need to provide the Selectmen with a summary of (a) the taxes, interest and penalties outstanding with respect to the Property, (b) the assessment, containment and removal costs incurred by the Town with respect to the environmental condition of the Property, (c) the mandatory amount of the payment in lieu of taxes that would be required from a buyer of the property, calculated in accordance with G.L. c. 44, § 63A, as of the date of this notice, and (d) the attorney's fees and costs related to the Town's investigation of environmental contamination at the Site and the lawsuit to collect those costs.

---

Stephen D. Anderson  
ANDERSON & KREIGER LLP  
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Cambridge MA 02141-1764  
Phone: 617-252-6575  
Fax: 617-252-6899  
e-mail: sanderson@andersonkreiger.com

7/18/2005

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-----Original Message-----

**From:** John Murray [mailto:jmurray@acton-ma.gov]  
**Sent:** Sunday, July 17, 2005 4:27 AM  
**To:** Board of Selectmen  
**Cc:** Stephen D. Anderson  
**Subject:** FW: Tax Taking Land at Willow and Central  
**Importance:** High

Dear Board Members,

As you have seen in prior correspondence, Town Counsel is asking the Town Treasurer to sign a document stating that the parcels at 214 Central St. and at 28 Willow St. are "***no longer required for public purposes and that the Property may be conveyed***". I first became aware of this new requirement (the Determination) yesterday. While I have sent the e-mail below to staff this morning, I do not believe I have completed a process that would allow me to sign such affidavit by Monday night.

These parcels were taken in 1998 and ***no*** staff person or Town Committee, except ACHC, has approached me for use of these parcels in the 7 plus years since the tax taking. However, I am concerned with the due diligence of my process, since I have never inquired of any Town department or committee, if they had a public purpose for these parcels until 3:46 AM on the Sunday prior to the Monday where I am to make such a declaration. I do not see any issue in signing such a declaration for the Board's August meeting, if the inquiry process so determines.

By copy of this e-mail to Town Counsel, I am asking him if my failure to sign the Determination affects his proposed motion document (Exhibit B to his e-mail), except for the obvious deletion of the second Whereas.

John

-----Original Message-----

**From:** John Murray  
**Sent:** Sunday, July 17, 2005 3:46 AM  
**To:** All Department Heads  
**Cc:** Board of Selectmen  
**Subject:** Tax Taking Land at Willow and Central  
**Importance:** High

ACHC is asking for the the parcels at 214 Central St. and 28 Willow St. at Monday night's Selectmen's Meeting. Town Counsel is asking me to stipulate in the attached document as follows:

***"I hereby notify the Board of Selectmen of the Town of Acton that the Property is no longer required for public purposes and that the Property may be conveyed"***

***Therefore, please notify me in writing prior to the Selectmen's meeting if your department has a public purpose for these parcels.***

7/18/2005

Extra Info 7/18/05  
#6

sat.'s message

John Murray

**From:** Stephen Anderson  
**Sent:** Saturday, July 16, 2005 11:28 AM  
**To:** Don Johnson; John Murray  
**Subject:** Acton/ACHC: Tax Title Land at 28 Willow Street and 214 Central Street



actonnichols.pdf (27 KB)  
ExhibitA-Determination.DOC (23...)

<<actonnichols.pdf>> <<ExhibitA-Determination.DOC>>

John:

I'm working on an answer to your question as to the disposition of Town-owned tax title property. In doing so, I have determined that the invoice listing as to the Acton/Nichols matter provided the other day (attached) understated the amount of attorneys fees and costs associated with the Tax Title Land at 28 Willow Street and 214 Central Street. This was probably due to a change in our software in or about 2001. Based on your affidavit dated July 19, 2001 which Jeff drafted in the lawsuit, as of that time, the Town had incurred \$13,298.96 in attorney's fees and costs related to the Town's investigation of environmental contamination at the Site and the lawsuit to collect those costs. Since the Nichols printout below begins with the bill for services in October 2001, adding together the \$13,298.96 figure and the \$3,785.71 figure gives you a much closer approximation of the actual attorneys fees and cost on the Nichols matter.

I'm also giving you a heads up on the direction I am going in the memo because it will involve some work on your part to prepare for Monday night. I have attached a "Notice of Determination Under M.G.L. c. 40, § 15" which you would need to make in order for the property to be disposed of by the process under G.L. c. 40, §§ 3 and 15. You will need to attach to this notification a summary of (a) the taxes, interest and penalties outstanding with respect to the Property, (b) the assessment, containment and removal costs incurred by the Town with respect to the environmental condition of the Property, (c) the mandatory amount of the payment in lieu of taxes that would be required from a buyer of the property, calculated in accordance with G.L. c. 44, § 63A, as of the date of this notice, and (d) the attorney's fees and costs related to the Town's investigation of environmental contamination at the Site and the lawsuit to collect those costs.

I should have the full analysis to you this evening or tomorrow by email.

Steve

Stephen D. Anderson  
ANDERSON & KREIGER LLP  
43 Thorndike Street  
Cambridge MA 02141-1764  
Phone: 617-252-6575  
Fax: 617-252-6899  
e-mail: sanderson@andersonkreiger.com  
www.andersonkreiger.com

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**Acton Community Housing Corporation**

**Nancy Tavernier, Chairman**

**TOWN OF ACTON**

Acton Town Hall

472 Main Street

Acton, Massachusetts, 01720

Telephone (978) 263-9611

[achc@acton-ma.gov](mailto:achc@acton-ma.gov)

---

TO: Board of Selectmen  
FROM: Nancy Tavernier, Chair  
SUBJECT: Pre-approval of Willow-Central Comp Permit application  
DATE: July 19, 2006  
cc: Town Manager, Town Counsel

The ACHC is planning to file the Willow-Central application for a Comprehensive Permit by mid-August. The engineering work is now complete and the application is in the process of being finalized. We have been trying to time the filing to best meet our schedule which would put the first hearing in early to mid-September. We did not want to have this on the ZBA's agenda before they cleared the other two 40B applications they are currently hearing.

As part of the procedure for Willow-Central that was voted by the Selectmen on July 18, 2005, these sections lead us to request from you a pre-approval for the Application materials.

3. *ACHC is hereby authorized to apply to other State and Town boards, commissions, departments, and agencies for any other necessary permits and approvals for the Project, exclusive of any building permits and other construction-related permits needed for the actual construction of the Project (it being understood that the Selectmen and ACHC intend, subject to Town Meeting approval, that the permitted Project and Property will be conveyed pursuant to applicable law and re-use restrictions to a qualified developer who will own the Property, construct the Project, and dispose of the units as appropriate).*

**4. Prior to submission, each such application shall be provided to Town Counsel, the Town Manager, and the Board of Selectmen for their respective review and approval, and for execution as may be necessary on behalf of the Town.**

When we file the Application and all the submittals with the ZBA in August, Town Boards will also receive a copy and they will be asked for comments. If we submit that full package to you for pre-approval, it would be for your August 14 meeting, which would delay the filing by several weeks. In a discussion with Walter, he urged us to present a summary of the application and materials to you for the July 24 meeting. We hope this will meet the intent of item #4 in the procedures. We ask for your Pre-Approval of the Application.

In addition to this pre-approval request, we have 2 related questions for the Board.

1. The application must be signed by the Owner of Record. That currently is the Town of Acton since it will continue to hold title to the property until a closing is scheduled for the ultimate selected developer. **Assuming your agreement, could you please authorize Don Johnson to sign the application?**

2. Due to the joint ownership of this parcel and the unique nature of the project, we would like very much to have the Board co-sponsor the application with ACHC. In the attached draft, you will see the Title page with that proposed designation and will also see the proposed wording in the Introductory materials. **Does the Board wish to be a Co-Sponsor of the application?**

I will be out of town until August 3 so cannot attend your July 24 meeting. I expect to have email access should you have any questions prior to the meeting.

Thank you.

**TOWN OF ACTON  
ZONING BOARD OF APPEALS**

**APPLICATION  
OF  
TOWN OF ACTON  
AND THE  
ACTON COMMUNITY HOUSING CORPORATION**

**FOR A  
COMPREHENSIVE PERMIT**

**PROPERTY LOCATED AT  
214 CENTRAL STREET AND 28 WILLOW STREET  
ACTON, MASSACHUSETTS**

**July 16, 2006**

**Submitted by:  
Nancy Tavernier, Chair, Acton Community Housing Corporation  
Ryan Bettez, Vice Chair, Acton Community Housing Corporation**

**On behalf of:  
The Town of Acton?????**

## **WILLOW-CENTRAL**

### **DEVELOPMENT SUMMARY**

#### **Introduction**

The Acton Community Housing Corporation (ACHC) is seeking a Comprehensive Permit from the Acton Zoning Board of Appeals under the provisions of M.G.L. Chapter 40B, Sections 20-23 ("Chapter 40B"). The ACHC is the Town Board responsible for developing affordable housing strategies and overseeing affordable housing programs in the Town of Acton. This quasi-public body is a Selectmen-appointed board, created by a Legislative Home Rule petition in 1996. (See Chapter 143 of the Acts of 1996, § 1.) Prior to this, ACHC was a private non-profit housing partnership group formed by the Selectmen in 1986.

The Selectmen's charge to the ACHC is to implement the Town's affordable housing policies. As part of this charge, the Selectmen encouraged ACHC to initiate action intended to create affordable residential housing projects and to create a specific project consistent with Town policy. The Willow-Central project is the ACHC's first hands-on housing development.

The subject property consists of two adjoining parcels of land in a residential neighborhood in West Acton. The two parcels combined are 15,335 square feet. The parcels have frontage on two streets, 68.0 feet of frontage (more or less) at 214 Central St. and 104.33 feet of frontage (more or less) at 28 Willow Street. The Willow Street parcel contains an approximate 2,000 square foot office and garage building, which will be demolished. The current zoning is Village Residential (VR), which would allow by special permit from the Planning Board up to 4 attached multifamily units on 15,000 square feet or more of land.

The ACHC is proposing to build three (3) affordable units, in two separate dwellings on the parcel. The deeds for the 3 units will each contain a restriction providing that such unit can only be sold to and purchased by people who meet specified affordability criteria for affordable housing. Each unit will remain affordable in perpetuity and will be counted toward the Town's 10% housing goal.

The Comprehensive Permit process known as Chapter 40B was created in 1969 in order to foster housing opportunities in Massachusetts communities that are affordable to a wide range of their community's residents. The Board of Appeals is granted decision-making authority for all local permits that are required for a Chapter 40B development. Many of the local boards and departments have reviewed the preliminary plans and are expected to make recommendations and provide advice to the Board of Appeals.

In reviewing a request for a Chapter 40B Comprehensive Permit, the Board of Appeals must determine whether the proposed development is "consistent with local needs." The

Board of Appeals must weigh and balance zoning, health, safety, environmental, site design, open space, and planning impacts of the proposed development. In designing the Willow-Central project, ACHC's goal was to design new homes that will provide quality housing that is affordable for income eligible individuals and families and will be a source of pride to its residents, the Town, and the developer, while at the same time appropriately protecting zoning, environmental and public health, safety and planning issues.

### **Development History**

These two parcels of land were taken by the Town for nonpayment taxes in Land Court Case Nos. 112320 T.L. and 112319 T.L. (Judgments dated May 4, 1998). It was most recently used as a septic system installation and repair company, until approximately 1995. The Town of Acton has spent \$65,096.00 for the assessment, containment and removal costs to clean up a petroleum contamination problem that was discovered after the Town acquired the land. The site was cleaned up and approved by DEP and the Town for residential re-use. Additional expenses were incurred by the Town for outstanding taxes, interest and penalties, attorney's fees, and costs related to the Town's investigation of environmental contamination of the Property, and the lawsuit to collect those costs. The ACHC paid the Town \$202,548.32 for the land which reimburses the Town for all of the expenses incurred as of April 30, 2006.

This proposal was developed over a period of several years, with input from the neighbors, appointed and elected officials, state housing officials, and other interested parties. The ACHC received approval by 2004, 2005, and 2006 Town Meeting voters for the use of CPA funds for project planning, design, and land acquisition. Town meeting voters also authorized the Board of Selectmen to convey the parcels to the ACHC for the development of affordable housing. ACHC has met with all the major town boards, presenting the proposed development concept and design and gaining their support.

While the Town Engineering Department was preparing an ANR plan and survey of the parcel, in anticipation of conveying it to the ACHC, it was discovered that there was a discrepancy in total land area of the parcel due to a miscalculation of the property line on Central Street dating back over 60 years. After researching the deeds and records at the Registry, Town Counsel was able to confirm the loss of 750 square feet of land, including 10 feet of frontage that had been omitted in a 1940 deed. Since the 3 unit design would have been adversely affected by this change in the frontage, an easement was negotiated with the abutting property owner at 206-208 Central Street. This easement will accommodate the driveway for one of the duplex units, which would have otherwise been eliminated.

ACHC is extremely grateful for the support and the help we received from the neighborhood and other West Acton residents, the Health, Engineering, Planning, and Building Departments, the Town Manager, the Finance Department, Town Counsel, the Acton Housing Authority, DHCD, MHP, and a private donor who will help fund the development costs in support of affordable housing.

## **Development Design**

The ACHC proposes to build a duplex farmhouse style building on the Central Street side of the parcel and a single family bungalow style building on the Willow Street side. The duplex would contain a 3-BR unit and a 2-BR unit, the bungalow would be a 3-BR unit. The wastewater disposal system has been designed to accommodate a maximum of 9 bedrooms and has been approved by the Board of Health. All three units will be sold or rented to low or moderate income households earning no more than 80% of the Area Median Income.

Under Village Residential Zoning, ACHC would be allowed to build up to 4 attached units as long as one was owner-occupied. The ACHC began the preliminary design process by gathering together the neighbors to seek their input on design, density and scale. They have been very supportive throughout the preliminary design and approval phases. After meeting with the neighborhood, it was agreed that a large scale structure would be completely out of character with the village area and the unique historic streetscapes on both Willow and Central Streets. Once it was determined that 2 separate dwellings would be more appropriate and acceptable, a Comprehensive Permit was required to accomplish the proposed design.

ACHC was awarded a Priority Development Fund grant of \$25,000 from DHCD and MassHousing in 2004 to fund preliminary engineering and design services in preparation for gaining approval for the development from relevant state and local bodies.

## **Development Process**

This Comprehensive Permit is unlike any that has come before the ZBA because of the public ownership of the property. While the application is being filed jointly by the Town and the ACHC, neither will be the final developer and it will not be a public construction project. Upon approval of a Comprehensive Permit for this development, it will be put out to bid to find a private or non-profit developer to construct the project according to the requirements of the Permit.

On July 18, 2005, the Acton Board of Selectmen approved special procedures to be followed for the development of the Willow-Central property and the conveyance of the property to ACHC. As part of that process, an RFP has been prepared by Town Counsel and approved by the Board of Selectmen and the Acton Community Housing Corporation. The purpose of this RFP is to select a developer/owner who will acquire, develop, restrict, and market the Property in accordance with the RFP and the Comprehensive Permit. It specifies the process for disposition and restricts the subsequent use of the Property for residential and affordable housing purposes. The Town will convey the Title for the property to the ACHC who will then re-convey it to the selected developer.

### **Condominium Ownership and Lottery**

The ownership of the dwellings and parcel will be in the form of condominiums. Each unit will have an Exclusive Use Area under individual control. There will be some shared common area responsibilities. The condominium units will be sold through a lottery with the exception of the Acton Housing Authority which will be given the Option to purchase the 3-BR duplex unit to be used for the low-income family rental program they administer. Local Preference will be given to one of the other two units. The federal and state governments have created affordability tables that set forth the different income levels that individuals and families can earn and remain eligible for affordable housing. The housing lottery, conducted by the developer, will be supervised by the ACHC.

### **The uniqueness of this application**

The Board of Appeals is presented with a very different 40B proposal for the Willow-Central development. While the typical 40B requirement is that 25% of the units are affordable, we propose 100%. Generally the Pro Forma, land value, project revenues, development costs, and projected profit factors receive careful scrutiny by the Board during the more routine 40B process, those issues are not necessarily relevant for this application. Until the Permit is granted and the developer selected through the RFP, many of these details will not be known. The RFP and the Land Disposition Agreement between ACHC and the Developer will focus on the project finances. ACHC is prepared to provide housing funds from private sources and the CPA housing funds to make Willow-Central financially feasible and to provide a limited profit to the developer. The level of subsidies for the development will not be known until developers respond to the RFP with their funding proposals.

### **Conclusion**

The Acton Community Housing Corporation appreciates the opportunity to work with the Board of Appeals on this development. We respectfully submit that the proposed Chapter 40B development is consistent with local needs and will satisfy an unmet housing need in the Town of Acton. We request the Board of Appeals votes to issue a Comprehensive Permit to allow construction of this development.

**COMPREHENSIVE PERMIT  
APPLICATION FORM**

Refer to the "Rules and Regulations for Comprehensive Permits" available from the office of the Board of Appeals for detailed permit filing requirements. Contact the Building Department at 264-9632 with any questions. Incomplete applications may be denied.

(Please type or print your application)

1. Street Address of Site

**214 Central St., 28 Willow St.**

Name of Proposed Development

**Willow-Central**

2. Applicant's Name

**Acton Community Housing Corporation**

**Nancy Tavernier, Chair and Ryan Bettez, Vice Chair**

Address

**Acton Town Hall, 472 Main St.**

**Acton, MA 01720**

Telephone **978-263-9611 (Nancy's home phone)**

Fax **978-264-9630 (Town Hall)** e-mail **ACHC@acton-ma.gov**

3. Record Owner Name

**Town of Acton, c/o Town Manager**

Address: **Acton Town Hall, 472 Main St. Acton. MA 01720**

Telephone **978-264-9612**

4. Zoning District(s) of Parcel(s)

**Village Residential**

Town Atlas Map(s)/ Parcel Number(s)

**Sheet F-2B of Town Atlas, combined parcels 64 & 65**

- 5 a) Total development site area **15,335 square feet**

b) Number of dwelling units **3**

c) Number of affordable units **3**

d) Number of units accessible **0** adaptable for persons w/ disabilities **0**

e) Total open space area **0.27 acres (76.02%)**

g) Total length of road(s) public **\_\_\_\_\_** ft private **0** ft

i) Method of wastewater disposal

**Private septic**

The undersigned hereby apply to the Zoning Board of Appeals for a Comprehensive Permit under M.G.L. c. 40B, §§ 20-23. The undersigned hereby certify that the information on this application and plans submitted herewith are correct, and that, to the best of his/her knowledge, the application complies with all applicable provisions of Law and Regulations.

Signed under the penalties of perjury in accordance with M.G.L. c. 268, § 1A.

\_\_\_\_\_  
Signature of Petitioner(s)

Date

\_\_\_\_\_  
Signature of Petitioner(s)

Date

---

**RECORD OWNER'S KNOWLEDGE AND CONSENT**

I hereby assert that I have knowledge of and give my consent to the application presented above.

\_\_\_\_\_  
Signature of Record Owner(s)

Date

\_\_\_\_\_  
Signature of Record Owner(s)

Date

## FORM DIR

### DEVELOPMENT IMPACT REPORT

The Development Impact Report (DIR) is intended to serve as a guide to the applicant in formulating the development proposal, as well as a guide to the Planning Board in its evaluation of the proposed development in the context of existing conditions and planning efforts by the Town. The DIR should be prepared as early in the development process as possible, even if certain aspects are unknown at that time. It is recommended that the various aspects of the DIR, together with a conceptual development plan, are discussed with the Planning Department staff as soon as possible, prior to the filing of an application for approval of a preliminary plan.

The DIR seeks to raise the broad range of issues generally associated with development plans in a form and in a language that is understandable to a layperson. It assesses development impacts which could possibly be avoided or mitigated if recognized early in the development process. Other portions of the DIR request information which will help the Town plan ahead and ensure adequate services in the future. It is the hope of the Planning Board that the use of the DIR, along with early consultations with the Planning Department staff and the applicant's continuing cooperation throughout the development process, will foster a development of excellent quality and design sensitive to Acton's natural and historic heritage and other community concerns.

The DIR shall be filed with an application for approval of a preliminary and a definitive subdivision plan. The DIR shall clearly and methodically assess the relationship of the proposed development to the natural, physical, and social environment. In preparing the DIR, professionals of the respective fields shall be consulted and a systematic, interdisciplinary approach shall be utilized which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning, designing and engineering of the proposed project.

## DEVELOPMENT IMPACT REPORT

Please type or print information in blanks below.

1. Name of Proposed Subdivision: **28 Willow Street, 212-214 Central Street**
2. Location: **28 Willow Street, 212 Central Street, and 214 Central Street**
3. Name of Applicant(s): **Acton Community Housing Corporation**
4. Brief Description of the Proposed Project: **Comprehensive Permit for a two building, three unit housing development.**
5. Name of Individual Preparing this DIR: **George Demakarakos, P.E.**  
Address: **Stamski and McNary, Inc., 80 Harris Street, Acton, MA**  
Business Phone: **978-263-8585 x112**
6. Professional Credentials: **Commonwealth of MA Registered Professional Engineer**

### **A. Site Description**

7. Present permitted and actual land uses by percentage of the site.

<b>Uses</b>	<b>Percentage</b>
Industrial	0
Commercial	0
<b>Residential</b>	<b>100</b>
Forest	0
Agricultural	0
Other (specify)	0

8. Total acreage on the site: **0.35+/- acres.**

<b>Approximate Acreage</b>	<b>At Present</b>	<b>After Completion</b>
Meadow or Brushland (non agriculture)	0	0
Forested	0	0
Agricultural (includes orchards, cropland, pasture)	0	0
Wetland	0	0
Water Surface Area	0	0
Flood Plain	0	0
Unvegetated (rock, earth, or fill)	0	0
Roads, buildings and other impervious surfaces	<b>0.05 +/-</b>	<b>0.08 +/-</b>
Other (indicate type)    Lawn Area	<b>0.30 +/-</b>	<b>0.27 +/-</b>

9. List the zoning districts in which the site is located and indicate the percentage of the site in each district. *Note: be sure to include overlay zoning districts.*

<b>District</b>	<b>Percentage</b>
VR (Village Residential)	100
Groundwater Protection District Zone 3	100

10. Predominant soil type(s) on the site: **Soil Map Unit 626B-Merrimac Urban Land Complex**

Soil drainage (Use the US Soil Conservation Service's definition)

<b>Soil Type</b>	<b>% of the Site</b>
Well drained	
Moderately well drained	100
Poorly drained	

11. Are there bedrock outcroppings on the site?     yes   X  no
12. Approximate percentage of proposed site with slopes between:

<b>Slope</b>	<b>% of the Site</b>
0 - 10%	100
10 - 15%	0
greater than 15%	0

13. In which of the Groundwater Protection Districts in the site located? How close is the site to a public well?

Zone(s): **3**

Proximity to a public well: **3,700'+/- (Clapp Well)**

14. Does the project site contain any species of plant or animal life that is identified as rare or endangered? (Consult with the Massachusetts National Heritage Program and the Acton Natural Resources Director).

    yes   X  no

If yes, specify: \_\_\_\_\_

15. Are there any unusual or unique features on the site such as trees larger than 30 inches D.B.H., bogs, kettle ponds, eskers, drumlins, quarries, distinctive rock formation or granite bridges?

    yes   X  no

If yes, specify: \_\_\_\_\_

16. Are there any established foot-paths running through the site or railroad right of ways?

\_\_\_\_yes      X no

If yes, specify: \_\_\_\_\_  
\_\_\_\_\_

17. Is the site presently used by the community or neighborhood as an open space or recreation area?      \_\_\_\_yes      X no

Is the site adjacent to conservation land or a recreation area?      \_\_\_\_yes      X no

If yes, specify: \_\_\_\_\_  
\_\_\_\_\_

18. Does the site include scenic views or will the proposed development cause any scenic vistas to be obstructed from view?      \_\_\_\_yes      X no

If yes, specify: \_\_\_\_\_  
\_\_\_\_\_

19. Are there wetlands, lakes, ponds, streams, or rivers within or contiguous to the site?

\_\_\_\_yes      X no

If yes, specify: \_\_\_\_\_  
\_\_\_\_\_

20. Is there any farmland or forest land on the site protected under Chapter 61A or 61B of the Massachusetts General Laws?      \_\_\_\_yes      X no

If yes, specify: \_\_\_\_\_  
\_\_\_\_\_

21. Has the site ever been used for the disposal of hazardous waste? Has a 21E Study been conducted for the site?      X yes      \_\_\_\_no

If yes, specify results: Site was remediated.

22. Will the proposed activity require use and/or storage of hazardous materials, or generation of hazardous waste?      \_\_\_\_yes      X no

If yes, specify \_\_\_\_\_  
\_\_\_\_\_

23. Does the project contain any buildings or sites of historic or archaeological significance? (Consult with the Acton Historic Commission or the Action Historical Society.)

\_\_\_\_yes      X no

If yes, please describe \_\_\_\_\_

24. Is the project contiguous to or does it contain a building in a local historic district or national register district?  
     \_\_\_yes                      X   no
25. Is the project contiguous to any section of the Isaac Davis Trail?  
     \_\_\_yes                      X   no
- If yes, please describe \_\_\_\_\_

## **B. Circulation System**

26. What is the average weekday traffic and peak hour traffic volumes generated by the proposed subdivision?

	Single Family	Town Houses
Average weekday traffic	9.57	11.72
Average peak hour volume AM	0.75	0.88
Average peak hour volume PM	1.01	1.04

27. Existing street(s) providing access to proposed subdivision:

Name: Willow Street Town Classification: Local

Name: Central Street Town Classification: Collector

28. Existing intersection(s): list intersections located within 1000 feet of any access to the proposed development:

Name of ways: Summer Street, Homestead Street and Church Street

29. Location of existing sidewalks within 1000 feet of the proposed site: East side of Central Street

30. Location of proposed sidewalks and their connection to existing sidewalks: a sidewalk is proposed at 212-214 Central Street. No connection is being proposed to an existing sidewalk.

31. Are there parcels of undeveloped land adjacent to the proposed site?            \_\_\_yes   X   no

Will access to these undeveloped parcels be provided within the proposed site?

\_\_\_yes                    \_\_\_no

If yes, please describe \_\_\_\_\_

If no, please explain why \_\_\_\_\_

## **C. Utilities and Municipal Services**

32. If dwelling units are to be constructed, what is the total number of bedrooms proposed?   8
33. If the proposed use of the site is nonresidential, what will the site be specifically used for and how many feet of Gross floor area will be constructed? N/A site is residential

34. Storm Drainage

- a. Describe nature, location and surface water body receiving current surface water of the site: **Because of the high infiltration rate there is very little runoff. The small amount of runoff from the existing site flows onto Willow Street and Central Street where it enters a closed drainage system before discharging into Fort Pond Brook.**
- b. Describe the proposed storm drainage system and how it will be altered by the proposed development: **The proposed system of drainage will consist of roof drain drywells, and an infiltration trench, taking advantage of the sites permeable soil.**
- c. Will a NPDS Permit be required?            yes          X  no

35. In the event of fire, estimate the response time of the fire department (consult with Fire Dept.)

**3-4 Minutes. (West Acton Fire Station at 258 Central Street is 600' from the site)**

36. Schools (if residential)

- a. Projected number of new school age children: 1.67 x 3 new units = 5.01
- b. Distance to nearest school: 2950' +/- to Gates School at end of Spruce Street

**E. Measures to Mitigate Impacts**

Attach brief descriptions of the measures that will be taken to:

- 37. Prevent surface water contamination.
- 38. Prevent groundwater contamination.
- 39. Maximize groundwater recharge.
- 40. Prevent erosion and sedimentation.
- 41. Maintain slope stability.
- 42. Design the project to conserve energy.
- 43. Preserve wildlife habitat.
- 44. Preserve wetlands.
- 45. Ensure compatibility with the surrounding land uses.
- 46. Control peak runoff from the site so that the post-development rate of runoff will be no greater than the predevelopment rate of runoff for the 10-year storm event..
- 47. Preserve historically significant structure sand features on the site.
- 48. To mitigate the impact of the traffic generated by the development.

Please use layman's terms where possible while still being accurate and comprehensive. Where appropriate, graphics shall be used. List sources of data, reference materials, and methodology used to determine all conclusions. Use additional sheets as necessary.

Development Impact Report  
Section E Measures to Mitigate Impacts

- 37. Prevent surface water contamination:** During construction, any silt, construction debris, etc. shall be removed from the public way or abutting property immediately upon discovery and all sediments spilled, dropped, or washed into public rights-of-ways shall also be removed immediately. Fill material used shall be free of hazardous material and construction debris. The developer shall comply with the Erosion and Sedimentation Control Plan.
- 38. Prevent groundwater contamination:** The septic system on each lot will be designed to meet or exceed Title V and the Town of Acton Board of Health standards. Each lot will be served by town water.
- 39. Maximize groundwater recharge:** Re-charge of runoff for the site will be provided within the proposed drainage system.
- 40. Prevent erosion and sedimentation:** During construction, any silt, construction debris, etc. shall be removed from the public way or abutting property immediately upon discovery and all sediments spilled, dropped, or washed into public rights-of-ways shall also be removed immediately. Fill material used shall be free of hazardous material and construction debris. The developer shall comply with the Erosion and Sedimentation Control Plan.
- 41. Maintain slope stability:** Cut and fill slopes, if any, will be stabilized immediately with six inches (6") of loam and seed during the growing season (April 1 to November 1) or with hay-mulch during the non-growing season (November 1 to April 1). An Erosion and Sedimentation Control Plan has been prepared, which will provide the necessary details.
- 42. Design the project to conserve energy:** The proposed dwellings will meet the stringent requirements of the state and local building codes.
- 43. Preserve wildlife habitat:** The site is not located within an area of estimated habitat of rare wildlife and the site has been previously developed and does not provide wildlife habitat.
- 44. Preserve wetlands:** There are no wetlands located within the site.
- 45. Ensure compatibility with the surrounding land uses:** The surrounding land uses are composed of residential single-family homes along Willow Street and Central Street. The existing and proposed use of the property is also residential. The approval of this comprehensive permit will maintain the feel of a small neighborhood.
- 46. Control peak runoff from the site so that the post-development rate of runoff will be no greater than the predevelopment:** Control of peak rates of runoff will be realized using basic drainage techniques including an infiltration trench, roof drain drywells.
- 47. Preserve historically significant structures and features on the site:** N/A
- 48. To mitigate the impact of the traffic generated by the development:** The project will generate traffic from the proposed two building, three-unit residential development. The vehicle trips generated from this proposed development are insignificant and will not require

**mitigation. The trip generation is also below the typical thresholds requiring traffic studies in the town of Acton.**

## COMPREHENSIVE PERMIT DEVELOPMENT PRO FORMA

If the project is for new construction of ownership units, complete this development pro forma. For other types of project, such as rental units or rehab-projects use pro formas approved or suggested by the Massachusetts Department of Housing and Community Development.

<b><u>A. Costs:</u></b>	<b><u>Total Costs</u></b>	<b><u>Per Unit</u></b>
<b>(a) Site Acquisition:</b>	<b><u>\$202,548</u></b>	<b><u>\$67,516</u></b>
<i>Hard Costs</i>		
(b) Site Preparation	<b><u>\$147,250</u></b>	<b><u>\$49,083</u></b>
(c) Landscaping	<b><u>\$10,000</u></b>	<b><u>\$3,333</u></b>
(d) Residential Construction	<b><u>\$385,510</u></b>	<b><u>\$128,504</u></b>
(e) Subtotal Hard costs (b+c+d)	<b><u>\$542,760</u></b>	<b><u>\$180,920</u></b>
(f) Contingency	<b><u>\$54,276</u></b>	<b><u>\$18,092</u></b>
<b>(g) Total Hard Costs (e+f):</b>	<b><u>\$597,036</u></b>	<b><u>\$199,012</u></b>
<i>Soft Costs</i>		
(h) Permit/Surveys	<b><u>\$5,000</u></b>	<b><u>\$1,667</u></b>
(i) Architectural	<b><u>\$11,000</u></b>	<b><u>\$3,667</u></b>
(j) Engineering	<b><u>\$20,000</u></b>	<b><u>\$6,667</u></b>
(k) Legal	<b><u>\$15,000</u></b>	<b><u>\$5,000</u></b>
(l) Insurance	<b><u>\$6,000</u></b>	<b><u>\$2,000</u></b>
(m) Security	<b><u>\$0</u></b>	<b><u>\$0</u></b>
(n) Developer's Fee	<b><u>\$0</u></b>	<b><u>\$0</u></b>
(o) Construction Manager	<b><u>\$0</u></b>	<b><u>\$0</u></b>
(p) Property Manager	<b><u>\$0</u></b>	<b><u>\$0</u></b>
(q) Construction Interest	<b><u>\$24,000</u></b>	<b><u>\$8,000</u></b>
(r) Financing/Application Fees	<b><u>\$1,500</u></b>	<b><u>\$500</u></b>
(s) Utilities	<b><u>\$2,500</u></b>	<b><u>\$833</u></b>
(t) Maintenance (unsold units)	<b><u>\$3,000</u></b>	<b><u>\$1,000</u></b>
(u) Accounting	<b><u>\$10,000</u></b>	<b><u>\$3,333</u></b>
(v) Marketing	<b><u>\$14,000</u></b>	<b><u>\$4,667</u></b>
(w) Subtotal Soft Costs (add h - v)	<b><u>\$112,000</u></b>	<b><u>\$37,333</u></b>
(x) Contingency	<b><u>\$11,200</u></b>	<b><u>\$3,733</u></b>
<b>(y) Total Soft Costs (w+x):</b>	<b><u>\$123,200</u></b>	<b><u>\$41,067</u></b>
<b>(z) Total Development Costs (a+g+y):</b>	<b><u>\$922,784</u></b>	<b><u>\$307,595</u></b>

**B. Profit Analysis***Sources:*

(A) Affordable sales	<u>\$334,800</u>
(B) Market sales	<u>\$320,000</u>
(C) Total Sales (A+B)	<u>\$654,800</u>
(D) Public grants	<u>\$225,548</u>
(E) Total Sales plus Grants (C+D)	<u>\$880,348</u>

*Uses:*

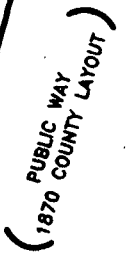
(F) Total Development Costs (=z)	<u>\$922,784</u>
(G) Total Profit (E-F)	<u>-\$42,436</u>
(H) Percentage Profit (G/F)	<u>-5.0%</u>

**C: Cost Analysis**

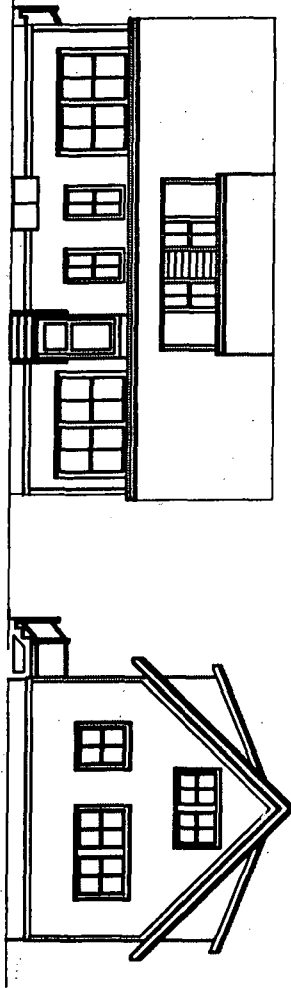
(I) Total Building Floor Area (gross):	<u>4,058</u> square feet
(J) Residential Construction Cost per Square Foot (d/I):	<u>\$95</u>
(K) Total Hard Costs per Square Foot (g/I):	<u>\$147.13</u>
(L) Total Development Costs per Square Foot (z/I):	<u>\$227.40</u>
(M) Sales per Square Foot (C/I): (Do not include proceeds from public grants)	<u>\$161.36</u>

**D: Construction Lender**

Attach a signed letter of interest from at least one construction lender.

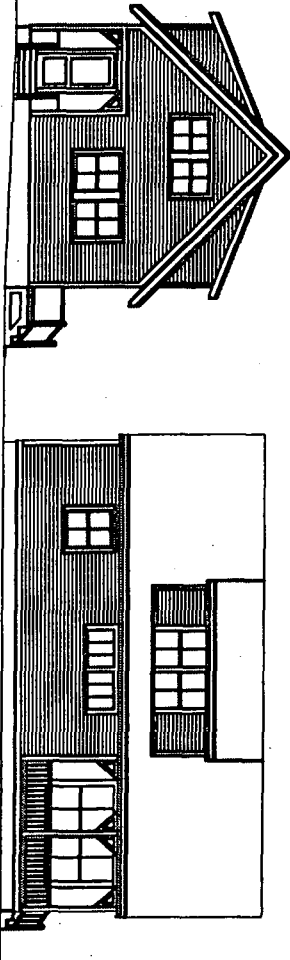


**WILLOW-CENTRAL DEVELOPMENT  
BUNGALOW UNIT AT 28 WILLOW STREET**



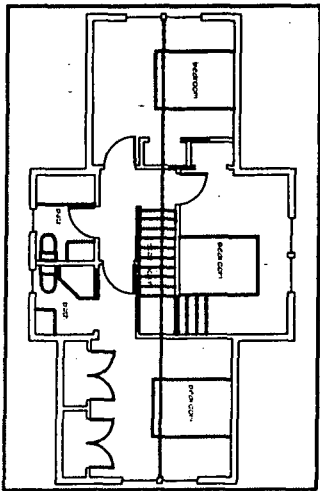
South Side Elevation Willow Bungalow

East Side Elevation Willow Bungalow

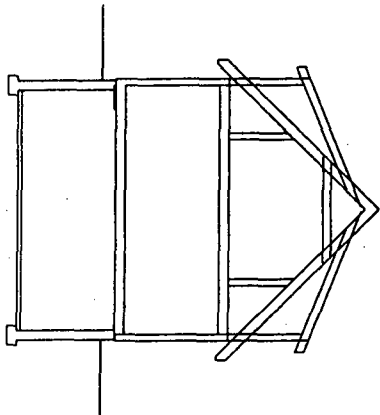


Street Elevation Willow Bungalow

North Side Elevation Willow Bungalow



Second Floor Willow Bungalow Plan



North-South Section Bungalow

**WILLOW/CENTRAL RESIDENCES**  
for Acton Community Housing Corporation, Acton, MA

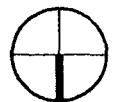
**PROPOSED SCHEMATIC ELEVATIONS**

1/8" = 1'

6/6/05

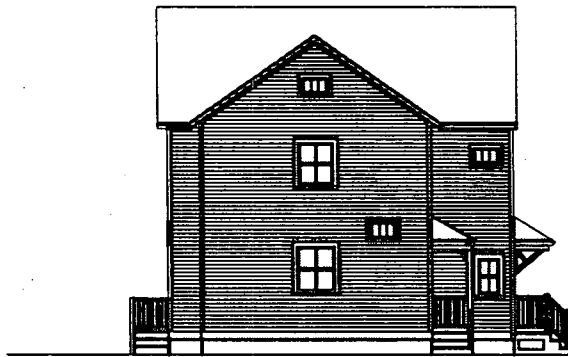
TERRENCE G. HEINLEIN AIA ARCHITECT

1 ABERDEEN ROAD WESTON MA



**A-1**

# **WILLOW-CENTRAL DEVELOPMENT DUPLEX UNIT AT 214 CENTRAL STREET**



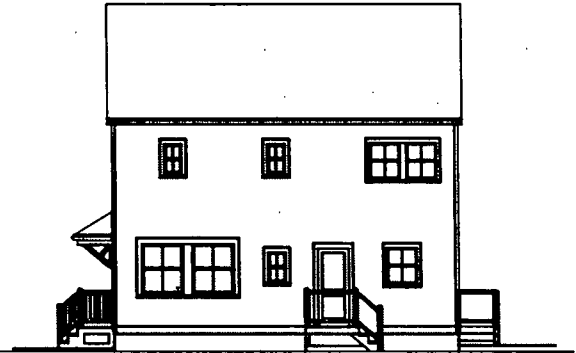
South Side Elevation Central 2 & 3 BDRM Units



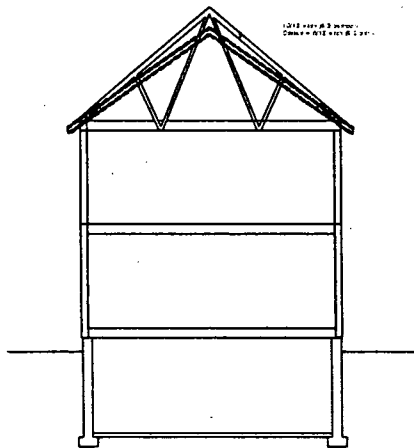
Central Elevation 2 & 3 bedroom Units



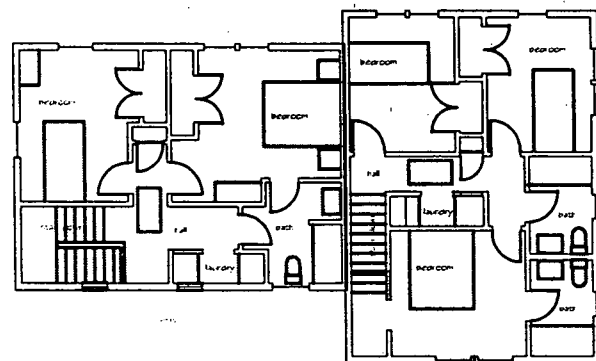
West Side Elevation Central 2 & 3 BDRM Units



North Side Elevation Central 2 & 3 BDRM Units



Gable Section Central 2 & 3 Bedroom Units



Second Floor Central 2 & 3 Bedroom Units Plan